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Table of Contents

Tuesday, July 16, 2013 – Day One

Introductions and Housekeeping	1
The Prison Rape Elimination Act.....	2
Introduction.....	2
Burning Issues.....	3
PREA Compliance Timeline	7
Overview of Selected PREA Standards	10
Cross Gender Searches and Viewing.....	11
Investigations of Sexual Abuse	12
PREA Audits.....	14
Who Can Conduct Audits	15
The Audit Instrument.....	16
National PREA Resource Center	17

Wednesday, July 17, 2013 - Day Two

Introductions and Overview	19
NIC Information Center	19
National Sheriff’s Association Update.....	20
Jail Standards Update.....	21
Mentoring and Technical Assistance	24
Office of Juvenile Justice and Delinquency Prevention (OJJDP) Update	
Minnesota Update	25

OJJDP Compliance New York State.....	26
Patient Protection and Affordable Care Act	28
Bureau of Justice Administration PREA Demonstration Grant	31
Texas Commission on Jail Standards Overview	34

Thursday, July 18, 2013 - Day Three

Legal Issues Update.....	36
Strip Searches	37
Shackling of Pregnant Inmates	39
Post Card Only Rules.....	40
Housing Inmates with Serious Mental Health Disorders	42
Montana Update	43
Dismantling of a Jail Inspection Program	45
Iowa On-line Incident Reporting	47
Evaluations/Close-Out	48
Appendices.....	50

Day One - Tuesday, July 16, 2013

Introductions and Housekeeping

Danny Downes, Correctional Program Specialist for NIC, welcomed the group. Danny informed the group that the first day of the meeting will be devoted to a panel discussion on the Prison Rape Elimination Act (PREA), as promised at last year's meeting.

As there was a slightly smaller turn-out for this year's meeting, Danny urged participants to talk with their colleagues about attendance at next year's meeting. He explained that active participation by members and the recruitment of new members is what it will take to keep the network going.

Danny briefly went over the logistics for the meeting:

- Restroom locations
- Break room locations
- Smoking area around the left side of the building
- Lunch spots in the area
- Daily schedule
- Agenda - There was one change to the agenda (refer to Appendix I for a copy of the revised agenda).

Danny did a brief overview of the services provided by NIC to prisons, jails and community corrections organizations. He pointed out that there may be some changes in services beginning Oct 1 due to the "Federal Sequestration". The sequestration involves cutting budgets in all federal agencies, including cuts in services and employee lay-offs. However, nothing definitive has been put forward at this point.

He then went around the room as the participants introduced themselves. Each participant briefly described the inspection process in their state, their scope of responsibility, i.e. city, county, state, and whether or not they work for a state Department of Corrections or if their agency was a stand-alone entity. Twenty-six participants representing 22 states attended the meeting. Refer to Appendix II for the final participant list.

The Prison Rape Elimination Act (PREA)

Introduction – Peg Ritchie

The panel discussion on PREA began with Peggy L. Ritchie. She is a Senior Program Specialist with the National Council on Crime and Delinquency, working in the areas of field-initiated training and technical assistance delivery for the National PREA Resource Center (PRC). She introduced herself and gave her background. She then provided the group with a brief overview of the PRC.

She asked the group if any of them has accessed the PRC website, for resources on PREA issues or technical assistance at <http://www.prearesourcecenter.org/>. She told the group that the PRC had just conducted the first round of training for individuals who will act as PREA auditors during upcoming inspections. The first group to be trained consisted of current ACA auditors and a few independent auditors. The PRC will be doing six more training sessions.

She then briefly went over a more comprehensive agenda for the PREA panel discussion (refer to Appendix III for the PREA Agenda) but emphasized that it was flexible based on the needs of the group.

Peg then conducted a brief discussion on how PREA impacts jails. She covered the applicability of PREA to local jails, incentives for jails to comply with PREA, the effect of contracts to hold detainees of the U.S. Immigration and Customs Enforcement (ICE) and other federal inmates. She briefly addressed how jails fit in the "Governor Certification of Compliance." Finally she gave an overview of how PREA came about and her experience with sexual assault in the prison systems in Arizona and Ohio. She emphasized children in adult prison settings become victims of assault on a regular basis.

The remaining panel members introduced themselves: Joshua Delaney, Senior Trial Attorney, Civil Rights Division, enforcing the civil rights of incarcerated persons; Dee Halley, PREA Program Manager, National Institute of Corrections; and Beth Layman, President of Price Layman, Inc. Each panel member provided the group with a synopsis of their involvement with PREA. (Refer to Appendix IV for bios of the panel members and other presenters.)

"Burning Issues" – Class Exercise –Dee Haley

Dee began this class exercise by asking the group to share the issues they felt were most pressing, regarding PREA implementation and the audit process. The following is a synopsis of the issues brought forward by the participants. (Refer to Appendix V for a copy of the complete PREA PowerPoint presentation.)

Use of a 3rd party to report in custody sexual assaults

- LaCole Archuletta, PREA Coordinator, Colorado Department of Corrections, felt that 3rd party reporting, i.e. having an outside entity in place for the reporting of sexual assaults that happen in a state or local facility, was an important issue they are facing in CO. She said that it has been difficult to get inmates to report sexual assaults while they were still incarcerated and CO has been trying to find an outside authority/entity to take reports from inmates. The PREA Standards state that inmates must have at least one place to report incidents of sexual assault.
- Josh Delaney told the group that any 3rd party reporting entity can be a quasi-governmental agency but can't be a contractor working for the state. Any number of governmental agencies could fill this role.
- LaCole told the group that Colorado has tried to get numerous agencies to take reports, but they have not had success getting a commitment.
- Rich Kinney, New York State Commission on Corrections, told the group that in NY there were issues with confidentiality when outside entities, such as rape crisis organizations, report sexual misconduct.
- Denny Macomber, Nebraska Crime Commission, reported that Nebraska has an ombudsman in place as a 3rd party for reporting purposes.
- Delbert Longley from the Iowa Department of Corrections reported that they have tried to use hospitals as reporting resources but have had problems because of the confidentiality requirements from HIPPA.
- Josh responded that legally there is not in conflict between HIPPA and the PREA standards.
- Isaiah Dennard from the Florida Sheriff's Association said that they are also having a hard time getting an agency to take responsibility for the PREA reporting function.
- Josh responded that in order to comply with standards the state or county needs to find an agency to do this, best efforts on the part of the state or county are not sufficient.
- Dee put this into the "parking lot" as issue that NIC might be able to assist agencies with.
- Jennifer Gaffney from the Massachusetts Department of Corrections asked if agencies can develop reciprocal agreements where two government agencies partner for this

function, e.g. one county can become the reporting entity for another county and vice versa. Two counties in Maryland are doing this currently.

- Josh told the group it may be possible to do this under the standards. He will take this issue to the PREA working group for further evaluation and recommendations. Josh stated that in any collaboration it is essential that the inmate still have the option to retain anonymity when reporting the incident. The inmate reporting the incident must have the choice to remain anonymous.
- Isaiah reported that there are problems in small counties and rural counties getting the reporting components into place, as there are fewer resources in these counties.
- Beth pointed out the need to educate communities about PREA in relation to HIPPA.
- Danny said that there is a lot of information out there and the PREA Resource Center can help agencies out with this issue.

The PREA Auditing Process

- Kristi Dietz, Wisconsin Office of Detention Facilities, brought up the issue of the possibility of developing a reciprocating MOU between states for the auditing process. This could prove to be a cost savings to both entities. She brought up several other issues regarding PREA audits:
 - Given the opportunity for reciprocal agreements between states, how difficult will it be to work through both the MOU and auditing processes?
 - How much of a learning curve will there be for the auditors, in terms of awareness of rules and practices in other states? and
 - If a state or individual facility is not in compliance, can that auditor come back and follow through with the agency to gain compliance.
- Kristi also asked the panel for feedback from the first auditor training.
- Josh responded that they made a list of issues that came up in the training and they are hoping to get this information out soon. He also told the group that there will be someone at the PREA Resource Center to answer questions from the field to ensure consistency in the auditing process, when it begins. He pointed out that the auditor needs to work closely with the PREA coordinator at each facility being audited to ensure that the pre-audit questionnaire is completed and coordination in place before the auditor gets on site. FAQ on the PRC website could be helpful, as PRC staff is always reviewing and researching questions. Refer to <http://www.prearesourcecenter.org/faq>.
- Rich brought up the issue of consistency among auditors. In NY they require agencies to write policy interpretations for each standard. The policy answers the question "what does this standard really mean?" Agencies need official findings based on an official interpretation of each standard and policy statements can be beneficial when

clarifying the meaning of standards. He also suggested that it might be helpful to have a monthly newsletter on the PRC website, to provide more information to the public.

- Ken Whipker from Indiana Department of Corrections asked about the cost of a PREA audit. He pointed out that there is speculation that a PREA audit will cost as much as an ACA audit. He also felt that it was important that the auditors for various facilities have experience in that type of facility, e.g. jail auditors have jail backgrounds.
- Josh told the group that no contracts are in place at this point to assist in determining cost. Essentially, audits will cost what the market will bear. He indicated that the *Notice of Final Rule* originally estimated that the average cost of an audit may be about \$6,000, depending on the size and complexity of the facility. Josh also indicated that those assumptions were calculated before the current universe of auditing information became available, e.g., the development of the PRC audit instrument. He also told the group that there will be four distinct types of auditors related to the four different types of facilities. It will be the agency's choice to interview the auditors prior to entering into a contract so they will be able to determine if the auditor's background is appropriate for the type of audit being done.
- Kathy Black-Dennis, ACA Director of Standards and Accreditation, told the group that ACA had hoped to incorporate the PREA audit with the ACA audit, as she reported at the last Network meeting. Unfortunately, ACA doesn't really know what a complete audit will entail at this point so ACA is reticent to make a commitment to incorporate PREA audits into the regular ACA audits. ACA is sending a team to West Virginia to test the auditing process as a pilot. She went on to say that last year ACA staff was naïve regarding the auditing process. She thinks it is a wait and see situation.
- Denny reported that Nebraska is forming their own state auditing body to do PREA audits. Josh told the group that this practice is okay as long as the auditors are trained, certified, and external to the agency being audited.
- Denney asked how you get people signed up for the auditor training. Josh told the group to go to the PRC website to sign up for updates and you will be given information regarding the November training session and other future training sessions.
- Brian Smith from the New Jersey Department of Corrections stated that he was under the impression that states could not audit themselves. Josh responded that someone in the state DOC cannot audit their own facilities. The auditing function needs to be a separate unit of attorney general's office, an independent ombudsman, or another entity external to the agency. He also pointed out that if a local jail facility is holding state inmates it cannot be audited by a state agency.

Sexual Assault Investigations

- Bill Wilson from the Virginia Department of Corrections told the group that he recently went to sexual assault investigation training in VA but the training participants were told that this training might not meet standards during the audit process. Dee told the group that taking sexual assault investigation training is not enough to ensure you are in compliance.
- Josh told the group that there are specific objectives that must be accomplished during investigations. If an external entity is doing the investigation there are specific

provisions they need to have in place. If a state agency does the investigation, the facility may be found to be noncompliant, but the state investigative entity may factor into the Governor's certification. Beth added that there is big difference among sexual assault investigations done in jails.

- Josh read the standard regarding investigations (refer to: <http://www.prearesourcecenter.org/library/search?keys=&cat=4>).
- Isaiah pointed out that the training is not designed to teach investigators how to investigate. Beth told the group that the auditor will look at the lesson plans for the specific training and determine if that training is being practiced during investigations. It is all about how the training is applied by the agency.
- LaCole reminded the members that training needs to be ongoing in the agency, as new people come on board, they too need training. There was lots of discussion about this.
- Beth pointed out that doing the training in a state is easier because everyone is coming from the same place, harder in the regional training where trainees come from different states.
- Tom Vogel from the Michigan Department of Corrections asked if there is a set curriculum for this type of training. Is there technical assistance available from the PRC to conduct this training?
- Rich asked if states can submit curriculum for various types of training associated with PREA to the PRC to get it approved and signed off as meeting the standard. Peg replied that this type of review is the same as policy review; the auditor can still disallow the curriculum.
- Isaiah mentioned that when you read the standards it doesn't spell this out. It appears that there is a push back from law enforcement agencies involved in the process, as to how they do investigations. He also mentioned that there is a lack of communication prior to trying to get the investigators to attend training. Dee told the group to look at the "black letter" for the standard, don't over think the standards.

Documentation

- Mike Records from the Delaware Department of Corrections asked how agencies are going to document their practices, policy development is easy; determining whether there is sufficient documentation to demonstrate compliance with a standard is much harder.
- Josh responded that agencies have the affirmative burden of demonstrating compliance to the auditor, and need to have documentation in place. The latest version of the audit instrument includes interviews with warden, other staff, and inmates, the review of logs and incident reports to ensure that the agency is in compliance. This will be done by the auditor working with agency personnel, so they are not surprised at the end.

- Dee pointed out that the *Pre-audit Questionnaire* (refer to Appendix VI) will be helpful and enable agencies to gather adequate documentation prior to an audit. Also available is an electronic version of the *PREA Tool Kit for Jails* at <http://static.nicic.gov/Library/026880.pdf>. Agencies need to begin this work prior to hiring an auditor so they will be prepared.

The following are the "Burning Issues" from the group:

- Reporting by an outside entity
- Audit reciprocity
- Auditors – knowledge of operational standards, how to build consistency, agency-facility knowledge
- Consistency of auditors
- Audit costs
- Auditor facility experience
- Youthful inmates
- Who can audit who?
- PRC training for investigations
- Documenting practice

Upon returning from a break it was decided, due to lack of time, to move past the small group exercise which involved each group working on some of the PREA standards and developing a list of questions.

PREA Compliance Timeline – Beth Layman

(Refer to the PowerPoint in Appendix V for a complete timeline.)

Beth did a brief over view of the timeline for compliance with PREA audits. She emphasized that there are four types of facilities subject to PREA audits

1. Adult prisons and jails
2. Community confinement facilities
3. Lock-ups
4. Juvenile facilities

Time line Highlights

August 20, 2012: Standards applicable to state and local facilities

August 20, 2013: Three-year audit cycle begins

October 1, 2013: First date on which federal grant funds may be impacted (FY 2014)

August 19, 2014: One-third of facilities must be audited

August 19, 2015: Next one-third of facilities must be audited

August 19, 2016: First three-year audit cycle complete: final third of facilities must be audited.

Questions/Comments from Participants

- Blake Taylor from the South Carolina Department of Corrections expressed concern about having enough auditors to conduct these audits, especially in a state with a plethora of facilities. Beth told the group that the PRC will be training another 100 auditors over the next year.
- Kirstie Willard, Kentucky Department of Corrections told the group that some facilities in KY don't plan on doing an audit at all or have decided to opt out for now.
- Joe Ferranti from the Pennsylvania Department of Corrections pointed out that those agencies that don't have audits might feel the impact in terms of obtaining federal funds/grants in the future.
- Josh told the group that in terms of the 5% funding penalty, which only applies to state systems, the "governor's certification" will not be due until, likely, December 2013, and impact FY 2014 grant funds. There is no expectation that everyone will be in compliance on day one. The date to fulfill the requirement for "Governor's certification" has also been pushed back.
- Shannon Herklotz from the Texas Commission on Jail Standards pointed out that facilities that house federal inmates, which are not in compliance with PREA, may lose their federal contracts or cooperative agreements.
- Richard pointed out that the only way to get legislation that allows jails to comply is to threaten the legislature with some loss of funding.
- Josh told the group that noncompliance can impact four grant sources listed in FAQ on the PRC website at <http://www.prearesourcecenter.org/faq#n1053>. He also told the group that "governor's certification" covers facilities operated on the behalf of the state, such as private facilities that house state inmates and regular state facilities.
- Bill asked about states with statutes that require local facilities to house state inmates. Josh said that the DOJ intends to interpret the term "contracts" broadly to encompass counties that are paid a per diem for state inmates. However, he added a caveat that "we don't really know what the final impact will be in terms of contracts."

- Ken brought up agencies that outright refuse to be compliant with the PREA auditing process– do they anticipate that this will go through the courts, on behalf of the jails? No one knows how this will play out.
- Josh informed the group that “governor’s certification” extends to state level investigative agencies who conduct investigations in local facilities. Agencies that want to be in compliance, who house inmates in contract facilities, must insure that the contract facility is in compliance. (Refer to Standard 12 in Appendix VIII.)
- Mike Funk, Illinois Department of Corrections, made the point that for county jails only holding county inmates there are no funding sanctions from the federal government.
- Beth responded that even if you aren’t sanctioned by the federal government you are still subject to civil suits based on non-compliance.
- Josh made several comments on the issue of compliance with PREA standards:
 - Audits are considered a substantive requirement of the standards.
 - An agency can’t go three years without an audit or the facility will be out of compliance.
 - If an agency has only one facility, it needs to be audited in the first year.
- Rich asked if the US Marshals’ Service is covered under PREA. Josh answered that the Marshals’ Service is under PREA and have both contracts and inter-governmental agreements (IGAs) that are considered to be contracts. Those facilities are only subject to audit if the terms of the IGA changes, which is considered a renewal. About one-half of the IGAs have addressed PREA compliance in their current agreement. The Marshals’ Service must comply with PREA as a federal agency, just like the BOP.
- Beth addressed the issue of housing ICE inmates in local facilities. She informed the group that the Department of Homeland Security (DHS) is working on their own separate set of standards, which begs the question: Will jails have to comply with both ICE standards and DOJ standards?
- Josh explained that there is a presidential memo requiring federal agencies to develop policies and procedures to meet PREA standards. DHS is still working on their standards. They will have to reach out to insure that the facilities they contract with don’t have to be audited by two agencies.

Overview of Selected PREA STANDARDS– Beth Layman

(For a copy of the PREA Executive Summary (Appendix VII) and The PREA Prisons and Jail Standards (Appendix VIII) refer to the Appendices at the end of the proceedings.)

Youthful Offenders

- Beth began the presentation by pointing out that the categorization of youthful offenders, those inmates under 18 years old, is based on age and it is not up to the state to determine who is a juvenile. She made the point that housing a youthful offender requires sight and sound separation in any indirect or direct supervision housing area. Youthful offenders are never to be housed in a housing unit with adult offenders. Youthful offenders can mix with adults outside of the housing unit as long as there is direct supervision by security staff.
- Wayne Soloman from the Virginia Department of Corrections asked about the rationale behind this rule. Beth explained that the housing unit is where they live, shower, etc. and it was determined that youthful offenders would have a higher risk of sexual assault in housing areas. A class room is a more structured environment.
- Bill pointed out that it hasn't been a problem in Virginia but now it becomes a huge problem for a facility that has only one or two juveniles in custody. Two agencies have tried to find some resolution on this issue – seeking to change the law so no one under 18 can be housed in an adult facility. Also in regional jails one of a group of jails will hold aside a unit for juveniles that all the counties can use for their youthful offenders. In VA pretrial juveniles must be held in juvenile facilities.
- Ken told the group that many agencies can't meet the standard so they have developed a protocol in the assessment process to evaluate the juvenile and classify based on that assessment.
- Isaiah asked about situations when federal law conflicts with state statutes. Josh responded that the PREA standards are not a binding federal law. Federal enforcement of the standards extends only to the 5% loss in federal funding. His advice was to either change state law or be creative.
- Beth told the group that agencies can't use isolation to comply with the standard. Isolation can only be used in exigent circumstances when there is no alternative. This rule also applies to transgender inmates.
- The rule regarding the segregation of transgender inmates generated a lot of discussion. Kristi pointed out that lesbian, gay, bisexual and transgender (LGBT) inmates are a population that requires us in the field to broaden our horizons and respond accordingly.

- Bill asked if LGBT inmates can sign a waiver to allow them to be placed in general population. Beth responded that no matter what rights they waive, your agency is still responsible to protect this inmate.
- Josh told the group that, at the end of the day, the agency makes the final decision about placement based on their best information – no one says that everyone must be housed in general population and agencies must consider placements on a case by case basis, assessing if the individual will be safe and not present a security risk.
- Beth informed the group that Denver County brought in the LGBT community to input into the process. Denver County policy and procedure regarding transgender inmates is available on the NIC website at <http://static.nicic.gov/Library/026337.pdf>.
- Denny stated that the issue comes down to what you can defend in court. While it has been said that agencies can't house LGBT inmates in specialized units; LA County has an LGBT unit that has been approved by the Federal government.
- Danny summarized that what we are talking about is protecting inmates.

Cross Gender Searches and Viewing – Adult Facilities - Beth Layman

(Refer to PowerPoint in Appendix V.)

- Beth began the presentation with a discussion of opposite sex viewing, either in person or via camera. A control room with cameras viewing both male and female inmates is not okay. It is best to install privacy screens, pixilate the cameras, etc. to prevent viewing of opposite sex inmates by the control room officer. Suicide watch cells, with video observation, are exempt from this rule. Female or male officers doing rounds in opposite sex housing areas need to announce their presence in the unit prior to conducting the security check.
- Beth pointed out males or females supervising inmates of the opposite sex need to announce themselves before each round, if several different officers' conduct rounds, otherwise they just need to announce at the beginning of the shift or anytime there is a change. Supervisors don't need to announce themselves, unless they are of the opposite sex.
- Tim asked if a female is on shift, then switches off with the male for a break, do the officers need to announce every time. Beth responded that any time someone of the opposite gender enters a unit they need to announce their presence.
- Someone asked about rounds conducted on the grave shift when inmates are sleeping. Beth responded that officers need to announce their presence quietly. If inmates can hear the door open, that may be enough.

- Kristie mentioned that in Wisconsin there is always a male and female on duty per standards. However roles and jobs change throughout the shift, it is a good idea to put in policy and procedure specific times that the inmates can change clothes, shower, etc.
- There was concern in the group that inmates will always know when the officer is in the unit – effectively eliminating the element of surprise. Josh responded that the standard is very strict at this point and that the working group has been discussing the reality of this situation but hasn't finalized language yet.
- Dee asked the group to take the facility layout, supervision mode, and staffing levels into account.
- Beth reiterated that if the inmates have an expectation that one gender is in the unit, and that changes, the new officer needs to announce his/her presence.
- Michael asked if this policy could potentially enable victimization.
- Rich asked if officers need to document that they made the announcement. Beth responded that the officer needs to log the announcement somehow, to show they are complying with the standard.
- Tim brought up the point of the use of signage indicating either a male or female on duty for the hearing impaired? Josh responded that it would be a good idea. He advised the group to look at the "16 series" of standards dealing with people with disabilities (refer to Appendix VIII).

Investigations of Sexual Abuse of Inmates in Confinement Settings – Beth Layman

(Refer to PowerPoint in Appendix V.)

Beth began the presentation by briefly going over the rule related to both Miranda and Garrity warnings.

Miranda Warning will be used:

- During an interrogation (accusatory)
- The person being interrogated must be in custody
- The interrogation is being done by a law enforcement officer

Garrity Warning (Refer to Appendix IX for a sample of the Garrity Warning.)

- Applies to public employees
- Any information given in a statement by the accused cannot be used in criminal prosecution. It is best to confer with the prosecutor's office before compelling a statement from an employee.

- Josh pointed out that criminal investigations take a long time, what about administrative sanctions in the interim? If the target of the investigation is known – they should be taken off duty. Collective bargaining agreements cannot prevent putting staff on “no contact” status.
- Beth emphasized to the group that they should not stop with “he said / she said” investigations. There is usually more information or evidence we can check out, rather than just the statements of the two individuals.
- Beth also pointed out that the investigating body needs to tell the accusing inmate the results of the investigation of the accused staff member. This applies to both administrative and criminal investigations. In all cases the accusing inmate needs to be told the outcome of the investigation. If the accusation is “unfounded” (the officer is exonerated), the inmate still needs to be informed of the result of the investigation. She clarified that allegations that were “unsubstantiated”, simply means that there was not enough evidence to find if it is true or not. The purpose of the standard was to help the inmate understand that steps have been taken.
- Beth made the point that agencies have the option to prosecute an inmate who makes a malicious false allegation.
- Joe mentioned that PREA and sexual harassment policies are not the same thing. PREA policies are designed to protect the inmates, while sexual harassment policies are more geared toward staff.

The panel took questions from network members. There were questions from the members regarding various aspects of PREA:

Q: How many compliance managers do you need if you have eight separate facilities?

A: This depends on whether the policies and procedures and protocols are the same at each facility. Each facility will be audited during the cycle if they are separate.

Q: Do you need a compliance officer for each facility?

A: If all the facilities have centralized administration then the agency will need one coordinator for the central area and separate compliance managers for significantly different operations, e.g. booking center as opposed to the housing facilities. Beth pointed out that the compliance manager needs to have the authority and time to develop, implement and oversee PREA and implement the standards.

Q: Is the compliance manager a full time job or a part time job?

A: This can depend on the size and complexity of the facility. However, no matter what size your facility, you still have to make sure every standard is met.

Q: How much PREA training is required for volunteers, contractors vendors etc.?

A: Josh told the group that any volunteer who has contact with inmates must be trained on procedures and how to report problems – the more contact an individual or group has with inmates, the more intense the training should be.

Q: What if your agency sponsors outside work crews, composed of sentenced, low security inmates, who are supervised by people outside the facility, e.g. nonprofits or other county departments?

A: Kentucky and other states and counties require yearly training for those people whose services are used to supervise inmates. Josh mentioned that if the “day reporting inmates” don’t spend the night in the jail then PREA doesn’t apply. Medical and mental health practitioners should also receive the training. This training applies to practitioners who work regularly at the facility – not doctors that are outside the facility, i.e. in a hospital or private practice.

Q: What about inmates in a pre-release center that work in and have access to the community? Do we need to educate Home Depot?

A: There are no PREA education requirements for the companies who hire the inmates, even those that are still in some form of custody, i.e. work release or weekenders.

(For further information refer to <http://www.prearesourcecenter.org/training-technical-assistance/prea-101/prisons-and-jail-standards>)

Beth reminded the group to look at the PREA standards for requirements to educate the inmates. Steve Metzger, from Yellowstone Co. Montana, wondered about what to do if inmates would not comply with the education requirement by watching a video or by refusing to come out of their cells to watch the video. How do you get the inmates to comply? Several ideas came from the group: run the information on close circuit TV, give the inmates other information that they need at the same time. Beth pointed out that this information/education must be provided to the inmate within 30 days of incarceration. Refer to the inmate education section of the standards. At this point the PRC doesn’t have a video agencies can use. Look for other ways to impart this information during other routine contacts, e.g. medical screenings, etc. Josh told the group to remember that education is more than just providing information.

PREA Audits – Beth Layman and Josh Delany

(Refer to Appendix V.)

- Beth gave some basic information to the group. Within 30 days of an audit, a report must be given to the agency or facility head. The results of the initial audit are not

made public. If any corrective action is required, the facility and the auditor will work together to correct the specific problems, with time lines for corrective action within 180 days. On, or before, the 180 days a final report will be posted on the agency's website. The correction period doesn't need to take 180 days. There can be a shorter correction period. If there are really small problems that can be corrected while the auditor is still on site the initial report can be the final report.

- Isaiah asked if there is an additional cost for the corrective action part of the audit. Beth responded that there might be fees by number of days worked throughout the entire audit process. Auditors are free agents and can charge whatever they want per their contract. It is up to the agency to negotiate fees with the auditor. DOJ will maintain a list of certified auditors with back ground information. This list will probably be available on the PRC website.
- Joe wondered if the auditor needs to be involved in formulating a corrective action plan. Josh pointed out section 115404 – c. of the standards (refer to Appendix VIII) says that the auditor shall take steps to verify corrections. A reaudit, following correction, doesn't necessarily require an on-site visit by the auditor.
- Who is auditing the auditors? DOJ will handle complaints about auditors. Lack of ethics or questions regarding competence will result in a peer review of the auditor.

Who Can Conduct Audits? – Josh Delaney

- There is a set of criteria to become an auditor. Each auditor needs specific qualifications and training. Josh associated this with being a lawyer. DOJ can take corrective action or disbar auditors.
- There was a question about reciprocal audits between states to save money. Josh told the group that they can do this as long as there is a year between the audits. Someone asked if we can talk to the working group about changing this? Josh made the suggestion to interject a third agency and do circular audits to avoid this issue. (Refer to Sections 115.93 and 115.401 – 115.405 in Appendix VIII for further information.)
- Josh mentioned the issue of a financial conflict of interest by an auditor, i.e. an auditor can't get money from the agency three years prior to and after the audit. Restrictions on reciprocity limit the potential for conflict of interest.
- Tim felt that there is a perception that the people who are trained to become auditors right now have the opportunity to make a "boatload" of money. Josh responded that states are free to develop their own auditing entities, so long as the auditors are external to the audited agencies and otherwise meet the certification requirements. Initially audit rates will be higher, when there are few trained auditors, but prices would get lower as more people are available to train.

- Kathy told the group that the first pilot audit from ACA, with a trained PREA auditor, will take place next month in West Virginia. However, ACA is no longer committed to providing PREA audits in conjunction with ACA audits, as she reported at last year's meeting. Liability is a huge issue for ACA when dealing with PREA audits. When an agency contracts for an ACA audit they get a lot of support from ACA staff in terms of reports. This support will not be available with PREA auditors.
- Rich asked if a state agency conducts the audits will there be a written negotiated agreement. Josh didn't know.
- Denny asked if Nebraska sets up a state agency to do audits what is the state's obligation to DOJ. Josh replied that the obligation would be the same as with private auditors. For more information Josh suggested going to the PRC rather than the DOJ.
- DOJ has not placed restrictions on how agencies choose auditors. Each agency should develop its own process, consistent with PREA Standard 115.402, which provides that 1) the auditor cannot be part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant state or local government); 2) an auditor cannot be a person who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within three years prior to the agency's retention of the auditor; and 3) the agency cannot employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

The Audit Instrument – Beth Layman

- This instrument was designed for adult prisons and jails and is very comprehensive.
- There are a number of parts to the instrument. (Refer to Appendix V.)
 - Process map
 - Checklist of documentation
 - Pre audit questionnaire – will be completed and uploaded to the auditor prior to the audit. Information from the Pre audit questionnaire will fill in information on to the auditor's compliance tool. Start using this right away to determine what you need to do to get through the audit.
 - Auditor compliance tool (105 pages)
 - Instructions for the PREA audit tour
 - Interview protocols. These were designed for the on-site audit and contain several different interview protocols: agency head, random staff, facility warden or administrator, specialized staff, and random inmates. In smaller facilities there will be a minimum of one inmate from each unit or 10 inmates. In facilities with a larger number of housing units the auditor may not have to interview an

inmate from each housing unit. The protocol also specifies questions for inmates with disabilities, LGBT inmates, and non-English speaking inmates. The protocols contain a list of questions that must be asked of each of the people in each of the groups. All of the questions are related to standards. These questions are not designed to uncover sexual abuse, just to see if the facility is complying with the standards. Facilities with non-English speaking inmates should plan to provide for an interpreter as inmates should only be used as interpreters as a last resort. Guidelines for auditors conducting interviews are available on the PRC website at <http://www.prearesourcecenter.org/library/search?keys=&cat=4> .

- Auditor reports – the initial report will just contain information on which standards the facility is complying with and which they are not. The final report will be much larger with documentation of compliance, etc.
- It is not required to have a policy to cover every single standard.
- Rich told the group that there should be a policy and procedure for each standard to make it easier to ensure compliance and for use in education and training.
- Isaiah responded that observations and interviews can be enough to insure compliance for the auditor.
- Beth reiterated that not every standard requires a policy. There was a lot of discussion about this issue, both pro and con.
- The PRC does not check for compliance – just for auditor practices.
- The auditor will provide the agency with both the preliminary and final reports. They will be in the same format.
- Beth showed the group a sample from pre-audit questionnaire. There was a long discussion about uploading the policies or parts of policies to verify compliance. Documents can be uploaded as PDF files. The auditors will be trained how to do this and can assist the agency. The pre-audit questionnaire was designed to streamline the audit process so there isn't time wasted during the audit.
- Beth showed the group a sample checklist of policies/procedures/documents (Refer to Appendix V.). All samplings will not be statistically significant but worked out between the agency and the auditor. The agency may pull the files prior to the audit or while the auditor is on site

National PREA Resource Center (PRC) – Peg Ritchie

- Peg did a brief presentation on the resources that are available at the PREA Resource Center. She went through some of the services offered through the PRC. She pointed out that individuals visiting the website can sign up for updates and will be notified when there is new information or to get questions answered.

- As mentioned earlier, the *PREA Tool Kit for Jails* - policy development guide addresses the standards and other things. It is available on NIC website at <http://static.nicic.gov/Library/026880.pdf>. The *Tool Kit* will help agencies develop an action plan for the audit process.
- There are five e-modules in development from NIC to provide on-line training regarding the investigation and audit processes.

Danny thanked the presenters. We will be in the Arapahoe room 1A21 tomorrow. Hopefully it will be cooler. The meeting was dismissed for the day.

Day Two - Wednesday, July 17, 2013

Housekeeping

Danny began the day by thanking the group for their participation in the PREA presentation yesterday. The panel members were impressed by the level of knowledge in the group. He reiterated the information presented on NIC's functions. He pointed out that the move to the new room was a big improvement as it is larger and has air conditioning. He again told the group where the smoking area is located. He also informed the presenters from the group that their presentation materials need to be provided to both he and Cheryl for inclusion in the proceedings that will be posted on the NIC website. He asked the group to please complete the survey on Survey Monkey to provide feedback on the meeting and suggestions for next year's meeting at <https://www.surveymonkey.com/s/13J2701>. He also told the group that for the legal update this year Carrie Hill will be replaced by Grace Phillips from the New Mexico Association of Counties (NMAC). She is a great presenter, but Carrie will also be missed.

Danny told the group that anyone who hasn't created an account on the NIC webpage can do so now, even if they are not chiefs. If anyone has any problems with this call Danny at 800-995-6423 ext. 43001 or email at d2downes@nicic.gov. If you think you may be able to come to the meeting next year, even if you aren't positive, please register to ensure there is enough space for you to attend. NIC requires a certain number of participants in order to hold the meeting. New programs will be posted on the NIC website, www.nicic.gov after October 1, 2013. The meeting will again be held in July. He advised the group to think about what subjects they want to discuss next year. He also mentioned that due to budget constraints we won't be able to have as many presenters as in the past. We will be limited to one paid presenter and a two day meeting.

Isaiah asked if NIC will have the Detention Facilities Inspection course next year. Danny told him that it will be held next year and he will look up the dates. Last year there wasn't enough interest to hold the class. Less than 10 people showed interest and NIC has a 20 person minimum. The "sequestration" has had an impact the numbers required to hold classes. He did emphasize that if the course is held it will be the same Mark Martin curriculum - 4 day program. There is also a self-study course available on the NIC website at <http://static.nicic.gov/Library/026880.pdf>.

NIC Information Center Overview

Danny took the group down to the information center to meet with Susan Powell for a tour and presentation on what is available on the nicic.gov website. They are to return by 0930 at the latest. Susan Powell, Public Services Coordinator, provided the group with an overview of the resources available from the NIC Information Center. She explained that the library provides access to over 18,000 corrections related resources including training plans, research reports, program evaluations and more. Many resources are available on-line at <http://nicic.gov/Library/>.

Susan also explained that the Information Center also provides a research service. This service enables corrections professionals to ask questions and be directed to information and resources through the Information Help Desk.

The group then took a tour of the Information Center, returning to the meeting with stacks of resource materials.

National Sheriff's Association (NSA) Update – Denny Macomber

Denny explained that the Chief Jail Inspector's Network has spots on several committees within NSA. The purpose of the participation on these committees is to enable the Chief Jail Inspectors Network to be known to the NSA community and other organizations. He informed the group that we have spots on Jail Detention and Corrections committee and the Education Committee.

Denny reported that this year at the NSA conference held in Washington, DC in January, the number one topic of discussion was PREA. They spent an entire 2-hour meeting discussing PREA. The consensus was that we will have our work cut out for us getting the sheriffs to comply with PREA. The sheriffs as a whole were very resistant to the standards and very verbal about their resistance.

Denny continued by telling the group that in the general session at the conference, Tate McCotter, head of the National Institute for Jail Operations at NSA, did a 1.5 hour presentation on why sheriff's departments don't need to comply with the PREA standards.

McCotter made the argument that if an agency has certain policies in place, i.e.:

- Staff code of conduct
- Zero tolerance for sexual misconduct
- Ability to enforce inmate rules and regulations
- Defensible staffing patterns

- Require security checks

If the agency has these policies in place and end up in court they won't be in trouble. Denny said Mr. McCotter told the group that he has worked with Carrie Hill on this idea. Denny wanted the network members to be aware that there was a lot of negative discussion, which might result in a push back by the sheriffs if the jail inspectors want to promote compliance with PREA. Mr. McCotter also works in Utah with Gary Deland on the jail inspection protocol that they sell to states.

In the education committee meeting – one idea that was mentioned was if you are not going to go through the PREA audit process, you should provide top notch training for staff. Denny mentioned that in Nebraska the Crime Commission provides all core training for jail staff. Next year they will add 8 hours on sexual abuse, but not necessarily PREA. Denny pointed out that in states without standards this is especially essential.

Danny informed the group that webinars are available from the PRC to assist you in developing training programs in this area.

Denny was pleased to inform the group that NSA is more focused on jails than they have been in the past. He emphasized that it is important to work with the sheriffs' association in your state regarding standards, certification and education so they recognize that CJIN exists. By making a positive impact on their perception of the Network and the jail inspection process it will help them to recognize the value of the inspection process. Our participation in the NSA has been well received and when we talk they listen.

He also pointed out that there is a group of sheriffs who are in favor of constitutional standards, while others don't have standards and are glad about it.

Again Denny asked the group if anyone was interested in taking over his role with NSA. Just let him know.

Danny thanked Denny and complemented him on all the work he has done advocating for the CJIN. Danny put up a flip chart for members who have ideas for topics for the next meeting.

Jail Standards Update – Kathy Black-Dennis

Kathy greeted the group and she suggested that the CJIN do a little self-promotion by submitting ideas for programs and be presenters at ACA conferences. She then went over some updates on recent news at ACA.

- ACA is in the process of developing health care standards for jails. There have been requests for separate standards from the field. The initial standards have been drafted and have been tested in several counties. If anyone would like an electronic copy of the proposed health care standards just email Kathy at kathyd@aca.org. ACA is sponsoring webinars that are open to anyone. Email her if you want to be included on the list for these webinars.
- There were only four recommendations for standards revisions this year – physical plant standards are going through some changes also.
- She wanted the group to be aware that there is a Jails Committee at ACA. It is headed by Mitch Lucas. ACA is trying to forge relationships with jails around the country.
- If anyone is interested in being on any of the ACA committees let Kathy know. ACA is always looking for new blood and new ideas. You can also email request to ExecOffice@aca.org
- There was only one nomination for a jail for the “Best in the Business” award. She encourages all the network members to promote nominations.
- ACA is now doing training in the United Arab Emirates. They are looking for individuals to become trainers in this area. It requires a 6 week commitment. She pointed out that it very different in foreign jails.
- Jennifer asked if it is too late to send in a recommendation for changes to the ACA standards. Kathy responded that it is too late for the August standards committee meeting. New standards or changes to standards can be submitted to ACA starting in mid-September. There is a form available on the ACA website at https://www.aca.org/standards/revisions/form_standardrevision.asp.
- PREA – what is ACA going to do to address this issue? Last year Kathy said they were going to try and merge the PREA audit with the ACA audit. When she made those statements she had not seen the audit tool. One-half of the people in the PREA auditors training were current ACA auditors. What they found out at the training was that the auditors had concerns about their ability to conduct PREA audits. Until they do some trial runs they don’t have any idea how ACA will be able to assist the field with the PREA audits.
- ACA has a big concern regarding liability issues related to the PREA auditing process. If an agency gets a PREA complaint and are sued. The auditors have expressed concern regarding their role in future litigation. This is the biggest piece of federal legislation regarding corrections that has happened in a long time. ACA audits and PREA audits are totally different. Also there will be no support for the PREA auditors, unlike ACA auditors who have tons of support. As soon as ACA knows what their role will be. They will let the field know.

- Q – Will ACA read the PREA audit reports if they do decide to take on PREA audits?
A --ACA audits are private and PREA audits are public information. Because of this, both audits need to be separate. One option would be to have ACA serve as a broker for auditors and agencies, the other option would be to treat PREA audits like ACA audits.
- Denny asked, in the pilot for the PREA audit, what did the report look like? Kathy replied that they didn't really produce a report. They took three auditors to two federal facilities and did interviews and critiqued interview styles. All three of the auditors did it differently. They tried an interview with a limited English speaking inmate, using a "language line", and it did not work well. The trial brought out areas in the process that need work.
- Denny asked if Kathy saw the audit process changing in the future. Kathy responded that she would like to simplify the process. She is sure it can be simplified but she is not sure it will be simplified. The length of time the audit takes and the cost will be huge factors in determining changes to the process. The audit process needs to be both efficient and cost effective. Even the Bureau of Prisons is saying that they don't know how an audit can be done with one auditor, rather than a team of auditors.
- Isaiah mentioned that it takes three days for an ACA audit and it seems like PREA audits will take a lot longer. Kathy told the group that currently ACA auditors receive \$40 per day + \$350 per audit and expenses.
- Rich asked if ACA auditors do a lot of interviews during audits. Kathy said that the PREA interviews are more formal, while ACA interviews are more informal. In the auditor training the difference was really apparent.
- Brian asked who the decision makers for PREA are. Kathy told the group that DOJ has 51% of the responsibility for PREA and the PRC has 49% of the responsibility. There are lots of differing opinions in the work group, between DOJ and PRC. Kathy had no idea who has the final stamp of approval.
- Danny mentioned that lots of groups have worked on PREA, i.e. Susan Campbell, Andy Moss Group, Just Detention International and it is still a work in progress. There are many individuals and groups in the PREA work group.
- Danny told the group he now thinks people are working for the same goals, when they started from adversarial positions.
- Isaiah remarked that there was early talk about ACA adopting the PREA standards. He asked what would happen if an agency is ACA accredited but not PREA compliant, how will this affect ACA? Kathy responded that ACA endorsed the PREA standards and their attorney has said that the two sets of standards are mutually exclusive. For example, the National Commission on Correctional Health Care (NCCHC) doesn't want to be involved in PREA audits, only health care. The PREA process would make an interesting research project.

- Kathy finally mentioned that *Discover Corrections* is a website with free job postings for jobs in corrections. The website is a collaborative effort between The Council of State Governments, American Probation and Parole Association, ACA, AJA and the Center for Innovative Public Policy with funding from the Bureau of Justice Assistance. To check out jobs or post a job, go to <http://discovercorrections.com/>.

Mentoring and Technical Assistance / Selecting the Right Path for Jail Inspections- Ken Whipker

Ken began his presentation with a couple of questions - How can jail inspectors approach the inspection process? Is it a personal mission to correct problems or just get in and out and done with the inspection?'

He presented the group with some "food for thought" regarding the role of the jail inspector, both real and perceived. (Refer to PowerPoint presentation in Appendix X.) He recommends inspectors become involved on another level with the agencies they inspect. Inspectors need to ask themselves – who do I work for and what do I want to accomplish during the inspection process. Each inspector needs to look at his/her vision of the process. He went on to ask about the vision of the agency being inspected. Do they need help to correct their problems? If they do is it your role to give them the guidance they need.

Ken asked the group how they view themselves when they go on an inspection. Do they see themselves as Santa Claus, handing out gifts in terms of the inspection process? Many times the agency views the inspector as the hangman coming to their facility to make trouble, or at worst shut them down. He pointed out that there needs to be balance in the inspection process. While the inspector needs to take the agencies intent into account, s/he still needs to make sure they comply with the standards.

Ken then asked the group about their role, as an inspector, in regard to the training process. Does the inspector review training records to ensure staff has been properly trained, therefore ensuring compliance? He feels that inspectors should be urged to attend training so s/he can understand how the practitioners have actually been trained. The inspector should act as a portal for training and be a resource for the field in terms of training. Danny made a point that since NIC training is free; sometimes people in the field think it has no value, even though it does have value.

Ken then asked the group if they considered themselves to be experts in their field. Do the people in the agencies you inspect respect you and your position? When problems arise do people call you for advice and counsel? Ken made the point that it is important that each

inspector is considered to be an expert. Each inspector must be technically and tactically knowledgeable. They need to have this as a goal.

What happens if things go wrong? Ken advised the group to encourage the agencies they inspect to look to them as a resource. To achieve the goal of being an expert in the field inspectors need to build their resume. Inspectors should educate themselves by attending basic training courses, i.e. PONI, staffing analysis, prison and jail crises intervention, and legal update courses at the very minimum. Ken also advised the group to attend state sheriffs' association meetings and training for custody personnel.

Danny informed the group that while NIC does a lot of training and technical assistance regarding the staffing analysis process – NIC won't do the staffing analysis for you. Kirstie reported that the Kentucky Department of Corrections does the staffing analysis for all of their jails. Bill touted the HONI program as a resource for not only staffing, but other issues that arise when opening a new facility. Rich informed the group that the staffing forms are all available on Excel, which makes it easier to complete the process. Someone mentioned that the legal update in Las Vegas, sponsored by AJA is one of the best resources for information on ever changing case law relating to jails. Check the AJA website for more information at <http://www.americanjail.org/>.

Ken finished the presentation by urging the network members to be a coaches, trainers and mentors. He asked them to work with new jail commanders and get to know each other and build a relationship based on trust. He also encouraged the members to become mentors to sheriffs who have no jail experience.

Office of Juvenile Justice Delinquency Prevention (OJJDP) - Minnesota Update Tim Thompson

Tim began his presentation by informing the group that fire inspections have been traded for OJJDP inspections in the jails in Minnesota. Jails have OJJDP inspections once every other year. The JJDP Act requires inspections every three years, so MN has exceeded the requirements. He provided some background of the program, how it came about and how it improved. Now all jails in MN have been in compliance for the last three years. Tim told the group that initially the violations went up dramatically, primarily because they were looking at the jails. However, the jails wanted to do it right so the jail inspectors became instrumental in bringing the jails into compliance.

Tim reported that at the beginning of the process tracking was poor. Refer to the JJDP Act data spreadsheet on NIC website at:

<http://community.nicic.gov/search/SearchResults.aspx?q=JJDP+Act+data+spreadsheet>. The form has all the information needed to conduct the inspections. Different types of jails have different designations regarding holding juveniles in adult facilities. The inspectors will access a percentage of juvenile files depending on how many juveniles have been in the facility. In MN jails can only hold a juvenile for 24 hours.

Tim pointed out that his agency just acts as an inspecting body as reports etc. are done by other organizations based on information provided by the jail inspectors.

- Small counties next to large counties are sometimes grouped into the rules for metropolitan counties. The *Juvenile Secure Detention Checklist*, also on NIC website at <http://community.nicic.gov/media/p/90075.aspx>, is used to determine if the juvenile can be in jail. Isaiah asked if there are juvenile detention facilities in MN. Tim told him that there are juvenile facilities but they are very strict on their criteria for taking kids. As a result, serious juvenile offenders are held in the jail for 24 hours, excluding weekends and holidays, until they go to court. After they go to court they have to go to some sort of juvenile detention facility, either public or private.

Tim then informed the group on the following issues:

- There continues to be disputes on what constitutes a lock up facility.
- The 24-hour rule is determined for facilities in “metropolitan statistical areas” – what area you are in determines how many juveniles the facility is allowed to hold.
- ICE contracted facilities – When juveniles are in custody because their parents are arrested, they can’t legally hold a juvenile on an immigration violation. The juvenile will then be put in juvenile detention that is co-located. Forms are available in the “vault” at <http://community.nicic.gov/media/>.

OJJDP Compliance New York State – Richard Kinney

Richard began his presentation by going over some of the basic structure for detaining juveniles. He explained that in NY the rules for juvenile confinement are very clear. (Refer to Appendix XI for a copy of the PowerPoint for this presentation and Appendix XII for the forms used in the process.)

- If a juvenile is 16-years of age or older they are tried as an adult.
- They are housed in adult facility, although they are housed separately.
- Under certain circumstances they can comingle with adults in classrooms.

- Juveniles 15 years and under can be charged as adults, for specific crimes. This happens primarily in NY City courts. Rarely is a juvenile under the age of 15 tried as an adult outside of the city.
- JJDPA does not apply to juveniles under the authority of an adult court.

Richard went on to explain the compliance and monitoring structure in New York State:

- The compliance structure allows inspectors to go into any jail at any time.
- The Commission of Corrections has full regulatory power over jails, penitentiaries, juvenile facilities and lock-ups. Inspectors also conduct the JJDPA inspections.
- New York had to establish a “monitoring universe” using the federal definition to determine the status of facilities as lock-ups or non- lock-ups.
- Inspectors had to determine the physical setting of the facility.
- They sent a letter/survey to all the agencies to assist in determining their status in terms of the monitoring function.
- Facilities are subject to continual review and revision. Changes in status occur all the time. It is important to have systems in place to keep a handle on changes.
- There are a total of 1445 facilities in the state. (Refer to slides 6-8 in Appendix IX for types and numbers of facilities). Family courts were added to the list this year. This leaves the inspectors with 531 active monitoring sites.
- Denny asked if the penitentiaries are run by the county or the state. Rich responded that penitentiaries are run by the county and prisons are run by the state.
- Every three years they have to inspect 531 facilities; they do 1/3 of the facilities every year. This ends up to be three staff members doing 3 or 4 inspections per day.

Rich provided the group with an example of an Access data base on facilities that they monitor that is submitted to the federal government. He then briefly explained the database to the group. He made the following points about the inspection process with regard to juveniles.

- Violations are few and far between. Most violations involved the juvenile lying about his/her age, saying they are older, and the agency doesn’t verify age or are unable to verify age.
- Another violation involves not maintaining sight and sound separation between adults and juveniles.
- Additionally facilities can’t have “scared straight” programs, due to sight and sound separation rules. They are now going through five years of records to search for possible violations.
- There was a question asking if parents are present during the scared straight program is there still a violation? Rich explained that the violation involves the court ordering

the juvenile to attend a scared straight program; it is not a violation if the attendance is voluntary. Rich went on with the presentation

- The act has not been reauthorized since 2002. There is potential for states losing money as funding for the act is cut back.
- Juveniles 15 and under, even if charged as an adult, can't be housed in the county jail. Sheriff's need to find a juvenile facility to house those offenders.
- All police departments must have a juvenile "questioning room". Inspectors don't regulate these rooms; however, the room must have sight and sound separation. This can require "time sequenced bookings" to allow juveniles to be booked separately from adults.
- Title II (State Formula Grants Program) supports state compliance with core protections for juveniles and helps states build prevention and intervention systems.
- Recently there has been discussion regarding the difference between the PREA and OJJDP. There was a lot of discussion regarding juveniles that PREA defines as less than 18 years of age, being housed in adult jails. There have been lots of comments in opposition to placing juveniles in adult facilities. DOJ decided against all out prohibition of juveniles in adult facilities. The rationale for the decision to avoid a total prohibition was due to many states having to restructure state law, at least at this point.
- Congress is looking at a total prohibition of juveniles in adult facilities – wait and see.

Danny informed the group that the training for New Jail Inspectors will be held 3/24-27, 2014. Information on the class will be posted on the NIC website after October 1st.

AJA will be holding legal issues updates in Placerville, CA on 8/26-28/2013 and in Philadelphia 10/7-9/2013. –issues brought before the supreme court during the past year will be discussed. These and other training programs are available at <http://www.americanjail.org/wp-content/uploads/2013/01/2013-Calendar-FINAL.pdf>

The Patient Protection and Affordable Care Act (PPACA) – Denny Macomber

Denny began this presentation by discussing the impact of the PPACA on jail systems. The 2013/14 budget in California responded to the act by changing the Medicaid (Medi-Cal) system to conform to the act. Denny asked the group if anyone has information on this issue that we can share. Currently there is not much information out there about the act, so he asked to group to share any information they come across.

Denny went over the main provisions of the act (refer to Appendix XIII). All of these provisions will expand the number of people who will now be eligible for Medicaid and insurance pools. It is likely that a number of inmates will fall under those rules. It will be

incumbent on jails to take some steps to ensure that the act is working for the agency. Getting inmates signed up for these programs prior to or upon release could reduce agency costs for medical care and provide a safety net for these populations.

Denny made the point that the success of implementation of the act could contribute to a decrease in crime, recidivism and criminal justice costs. Additionally it could improve the health and healthcare for inmate populations. There are still many provisions in the laws which are not in place, so we have to wait and see what happens after full implementation. Some of the facts that Denny presented are as follows:

- Incarcerated people have a disproportionate incidence of chronic diseases and serious mental health/substance abuse issues.
- The Michigan Department of Corrections almost doubled the costs for health care from 1999 to 2008. This kind of increase is common in other states as well.
- The rate of inmates with HIV/AIDS is four times greater than it is in the general population. This is also true of the rates of hepatitis C, which is as high as 22% in some state prisons.
- Former inmates face many barriers to health care, including lack of employment and employable skills, low levels of education, and poverty.

Denny told the group that one of the new rules, which will have a major impact on jails, states that if an incarcerated person is admitted to the hospital for 24-hours or longer, they are no longer considered to be an inmate and become eligible for federal Medicaid assistance. In the past women with children and pregnant women have been eligible for Medicaid, but they were not signed up for assistance so the jails were unable to collect funds to reimburse their medical expenses.

A question was asked regarding how does an inmate get enrolled if they are in jail. Denny responded that when a person enters jail, and s/he is already on Medicaid, his/her Medicaid benefits can either be "suspended" or "terminated". It is essential that agencies be aware of the rules in their state that determine whether an inmate's Medicaid benefits be either terminated or suspended. It is much harder to reinstate terminated benefits rather than simply reinstating suspended benefits.

Denny informed the group that starting in 2014 the Medicaid rules will change dramatically covering more services and more people will be eligible. Refer to Appendix XIII for a list of those changes. Some points he highlighted regarding the changes included:

- Preventative services for chronic diseases.
- Acceptance of preexisting conditions for those on Medicaid.
- Coverage for prescription drugs and nonprescription drugs and devices.

- Increased services for mental health care and substance abuse services – which could prove to be significant to the inmate population upon release.
- Increases in community health clinics commonly known as Federally Qualified Health Centers (FQHCs) or Primary Care Medical Homes (PCMHs). Both of these models are operated as a nonprofit with grants as their primary source of funding. For further information on these medical delivery systems refer to or <http://www.chc-inc.org/downloads/PB%20Navigator%20Report.PDF> or http://pcmh.ahrq.gov/portal/server.pt/community/pcmh_home/1483
- A major change will be a decrease in Medicaid cost sharing, from the current 100% to 90% by 2020. Rich remarked about the requirements to set up the exchanges to be eligible for reimbursement, if the state doesn't set up the exchanges it won't get the reimbursements.

Denny continued the presentation by discussing the “Individual Mandate” and insurance exchanges.

- Basically the “Individual Mandate” requires individuals, who do not qualify for Medicaid to have a minimum level of health insurance beginning in 2014. There will be penalties for those who do not comply.
- There are exceptions to this mandate, i.e. inmates who are incarcerated for more than one month and who are not awaiting a disposition of charges, are not required to have insurance. (Refer to Appendix XIII for a full list of exemptions.)
- The Individual Mandate will be administered through the IRS, the poorer you are the more the government pays toward your premium.
- Penalties, exemptions, rules and regulations are still in process and are not nearly ready for implementation.
- The Health Insurance Exchanges are on-line marketplaces to purchase private health insurance. The states have an option to either establish a state health insurance exchange or use a federally established exchange.
- Premiums are based on a sliding scale depending on income.
- An individual is not eligible to use the Health Exchange if they have “affordable” employer sponsored insurance.

Denny pointed out that the key to making the system work for the benefit of jails is by “enrolling individuals into health insurance programs who leave prisons and jails.” (Refer to Appendix XIII for things corrections personnel can do to facilitate enrollment.) One way to do this is with a system of health care navigators. California is hiring navigators to work in state institutions to facilitate enrollment. For more information on the use of navigators go to <http://www.chc-inc.org/downloads/PB%20Navigator%20Report.pdf>

Other key points that Denny brought before the group include:

- The need for jails to make contacts within the community to refer inmates upon their release.
- The need for improved information technology – if this electronic information sharing doesn't work, none of this works.
- Refer to the references page in Appendix XIII for more information on this topic.

Jim informed the group that in Montana they sell inmate health insurance very cheap, somewhere around \$0.18 per day per inmate. The insurance is in effect while the inmate is in custody and has a \$10,000.00 deductible.

BJA 2012 PREA Demonstration Grant - Kristi Dietz

Kristi began her presentation by telling the group that last year the Wisconsin Office of Detention Facilities (ODF) wrote a grant proposal for a demonstration grant from the Bureau of Justice Administration. They were awarded the grant last fall. She then gave a brief overview of the WI DOC. (Refer to Appendix XIV for a copy of the PowerPoint presentation.) In WI there is an ODF office in each of the five districts in WI (72 counties). All county jails, houses of correction, secure juvenile detention, unlocked Huber facilities and municipal lock-ups are inspected each year. Her office can close facilities that are not in compliance with state standards but this hasn't been done for 20 years.

She then went on to explain the purpose of the grant funding:

- The ODF had the goal to mitigate agency liability, partner with selected facilities, and to work together to implement the PREA standards.
- The grant was used primarily for technical assistance to local agencies encompassing small, large and medium sized jails in selected counties.

Kristi told the members that there were five (5) goals for utilizing the demonstration grant funding in the selected facilities.

1. Increase local agency awareness of PREA standards and sexual abuse that occurs in correctional settings.
2. Ensure local agency adherence to the standards by creating templates for the many policies under PREA and allowing the agencies to make them specific to their facilities
3. Increase inmate awareness and understanding of sexual abuse by providing various tools such as DVDs and posters.

4. Develop a “training for trainers” program with participants from each selected facility to enable them to go back to their facilities and train current and future staff on PREA and sexual abuse.
5. Develop a data collection strategy and system to collect data on all PREA performance measures and offender treatment and counseling. This may develop into a state wide data system.

Rich commented on the problems with using this system in New York where there are 13,000 inmates, 200 of which are 17 year olds. This puts state statues in direct conflict with PREA.

Kristie continued the presentation by asking the question, “If jails are not required to comply with the PREA standards, why do it?” She stated that there are many reasons why sheriffs and jails should choose to comply.

- Sexual safety – This is demonstrated by inmates that are free of sexually transmitted disease (STD) at intake but have contracted an STD by the time they are released. Lab work to test for STDs upon intake and release is common in prisons, but not mandatory in local detention facilities.
- Recognizing that preventing sexual abuse and assault of inmates is an integral component of the facility security plan.
- Mitigating future liability.
- Demonstrating the agency’s commitment to the prevention of sexual abuse.
- Promoting thorough investigative practices.
- Ensure that staff is appropriately trained in sexual assault prevention and response.

Kristie briefly discussed the development of a Sexual Assault Response Team (SART). She pointed out that when someone in the community is sexually assaulted there is a team approach to assisting the victim. Several of the participating agencies already have a SART in their communities. Part of the grant proposal was to see if this service can extend to sexual abuse in a detention setting. She went on to highlight the following points relating to having a multidisciplinary response to a PREA allegation. (Refer to Appendix XIV for a full discussion of this concept.)

- “Inmate Victim” is new term used to describe inmates who have been sexually assaulted while in custody.
- One of the goals of this approach is to interrupt the cycle of abuse and misconduct.
- A lot of facilities don’t have the resources to implement a sexual assault team. Counties often have difficulty keeping up with the need in the community, much less taking on assaults in jail.

- Just because someone has committed a crime does not mean that they should be victimized.
- Getting all of the components for a multidisciplinary response team on board can be difficult.
- If you are sexually assaulted in a facility there needs to be an advocate from the community, along with the nurse, correctional officer etc. during the exam process. This process needs to be put in place in advance of incidents. It also requires training and planning.
- Rich asked if the medical exams can be done in the facility. Kristi responded that it is a conflict for DOC nurses to take evidence in a sexual assault allegation but the agency can bring in a medical professional from the outside to collect the evidence.
- Jennifer wanted to know where they get the advocates. Kristie told her that they were already working in the community and expanded to jails, but trained to work with inmates.
- A delay in reporting a sexual assault until after the inmate is released has repercussions and can limit the ability to investigate the assault, as with any victim.
- Success in combating sexual assaults in detention settings depends on: effective leadership and an agency culture that prioritizes efforts to combat sexual abuse. Unfortunately, you can't dictate a culture, but implementing the standards can help foster a cultural change.

Kristie then took questions from the floor.

Q: What are the parameters of the grant?

A: Kristie told him that one county and the associated facilities in that county will take part in all aspects of the grant; from training to policy templates, to response efforts, so they share the message with the rest of the counties that this works.

Q: Are the areas on the map shown earlier participating in the grant project right now?

A: Still working on putting this together, one local lock-up pulled out, claiming there was no need. They also haven't worked on the data collection piece yet. They don't even know if the software to carry this out is available anywhere.

Q: Who are the perpetrators of these assaults?

A: Anyone can be a perpetrator - from a model correctional officer, to male on male assaults by inmates, to officers who "fall in love". Officers are still responsible to maintain professional boundaries and guard against manipulative inmates.

Q: Danny asked if this was a BJA grant.

A: Kristie responded that there are still more grants available – check the BJA website. If you know someone who would be interested in doing this type of work there is a lot of money out there right now. Agencies can also use the PRC website and get on a mailing list for funding opportunities.

Texas Commission on Jail Standards (TCJS) Overview: Technical Assistance the Key to a Successful Inspection – Jimmy Barton

Jimmy began his presentation by giving an overview of the structure of the TCJS. The TCJS is regulated by statute and jail inspections can result in the closure or remediation in jails that don't meet standards. (Refer to Appendix XV for the PowerPoint presentation.) The following are the highpoints of the presentation.

- The Commission members are appointed by the governor and they have the power to act on recommendations from the TCJS Executive Director. You never know which way it is going to go. The Commission meets quarterly.
- The Commission receives a copy of all the audit reports or problem reports, if the agency isn't responding. Agencies can appeal findings to either the inspectors or the Commission.
- The TCJS reviews required operational plans for 245 facilities every five years. They evaluate how successfully each facility is implementing their plan.
- There are four inspectors for the entire state. They are required to inspect each facility every twelve months.
- In the past all facility inspections were announced 30 days in advance.
- The Sunset Advisory Commission, whose job it is to review all state programs for usefulness and duplication of services, made the decision that the TCJS should do unannounced inspections.
- Currently all inspections are unannounced inspections. However, large facilities get some notice because of the size of the facilities.
- One of the reasons that inspections are unannounced is evidenced by Montague County in northern Texas. The newly elected sheriff toured the jail and shipped all the inmates out the same day. In other facilities they would clean up prior to the inspections, so they could pass, when they were actually making methamphetamine in the jail. In that instance the sheriff and jail staff were indicted and sentenced to jail time. Today it is a model jail.
- The motto among the inspectors in Texas is "we are here to help you".
- Texas requires one (1) officer for each 48 inmates in larger facilities. However any facility that has more than ten inmates on a floor needs an officer 24-7 on that floor.

- Texas only allows 40% of the facility to be dorm housing – the remainder of the housing can be lower occupancy cells (not all single cells.)
- Someone asked Jimmy how much time the inspectors give facilities to come into compliance. He replied that the time frame for corrective action can be up to one year, but the Commission can impose shorter time frames to complete corrective action.
- All inspections are pass/fail on 600+ standards. If a facility is out of compliance on one standard, they are considered to be out of compliance.
- Each jail has a design capacity and they can't exceed it.
- There are 30,000 open beds in TX right now.
- The TCJS provides several types of technical assistance – including staffing analysis. However the staffing analysis is just a recommendation.
- They also investigate inmate complaints. However the inmate needs to go through the grievance process first.
- All deaths and escapes must be reported to the Commission within 24 hours of the incident.
- The TCJS now prides itself on being a kinder, gentler inspection service.
- Currently the focus of the Commission is on training. They did 8,000 training hours last year, in addition to inspections.
- The entire organization is run on a budget that is less than \$900,000 per year.
- The TCJS is now on social media go to <https://www.facebook.com/texascjs>

Thursday, July 18, 2013 – Day Three

Legal Issues Update –Grace Phillips

Danny introduced Grace Phillips who is counsel for the New Mexico Association of Counties (NMAC). Grace described herself as an employment litigation attorney with extensive experience working with correctional facilities. She described the jail structure in New Mexico as a little different. All of the facilities in the state are managed by a Detention Administrator, except for one that is managed by a sheriff. The administrators all belong to a group. NM has voluntary standards accreditation and currently one-third of the facilities are working on accreditation. NM has no jail inspectors.

Grace began the presentation by going around the room asking the participants to introduce themselves and what they thought were their biggest issues in terms of liability. The following are the comments from the members.

- Joe (PA) - Biggest liability issue involves the physical plants of jails in the state
- Howard (MA) - Biggest issue is medical liability
- Roger (OH) – Liability involving inadequate funding for facilities
- Brian (NJ) – Liability related to inadequate budgets
- Rich (NY) – Liability around medical issues
- Wayne (VA) – Liability around overcrowding, due to a glut of state inmates in county facilities
- Bill (VA) –liability due to overcrowding, there is no way to limit the number of inmates housed in a facility, only if it is a fire hazard
- Kristi (WI) –Liability involved with jail operations (don't allow crowding)
- Denny (NE) - Liability because it is so cumbersome to change standards they can't effectively respond to changes in case law
- Michael (DE) –Liability with medical and mental health issues and too few administrative segregation beds
- Jim (MT) –Liabilities involve no uniformity in standards, training, medical practices, only voluntary compliance with standards, lack of supervision of inmates, and hiring of staff/officers
- Jennifer (MA) – Liability has to do with the lack of ability to regulate, due to politics
- Kirstie (KY) – Liability involving funding for the counties, as they are having a difficult time selling bed space to other federal and state agencies. In the DOC liability involves medical issues, lots of privatized medical services which started as a good thing, but now providing services is too profit driven
- Jim (TX) - Liability because they can't hire officers due to competition with oil companies.

- Mike (IL) - Liability with mental health inmates , closing of mental health facilities in the community has created a huge problem for the jails
- Tim (MN) – Liability with medical and mental health services
- Delbert(IA) – Liability around mental health services
- Steve (MT) –Liability caused by overcrowding, old facilities, and lack of staff (some facilities still use road deputies and dispatchers to watch the jail)
- Steve (ND) – Liability with providing adequate health care because of drug use in the inmate population
- Shannon (TX) –Liability caused by mental health issues and medical contractors
- Blake (SC) - liability due to the sheriffs having the ability to manage the jails, or not. Jail management is an option. Additional liability with the lack of supervision of inmates due to lack of staff, poor quality of staff and turnover, and poor facility layout
- Tom (MI) – Most liability caused by lack of staffing, cost of operations, and privatization of jail services
- Isaiah (FL) –Liability involving conditions of confinement and, in Miami-Dade, deliberate indifference
- Ken (IN) – Liability due to poor staffing levels and contracted medical providers at each facility. They have no specifications on the type and amount of care that could be provided

Grace gave the group an overview of the topics she will cover during the morning. (Refer to Appendix XVI for a copy of the handout.)

Strip Searches

The first case Grace brought before the group was *Florence v Board of Chosen Freeholders* (132 S. Ct. 1510 (2012)). In this case the court said that “reasonable suspicion is not required for strip searched prior to moving arrestees into **general population.**” Grace made the following points regarding this decision.

- There has been an ongoing controversy over the criteria for conducting strip searches. She told a story of a county in NM that, despite many meetings, failed to implement clear and legal strip search policies and was sued right away. Also, NMAC quit insuring counties that failed to change their practices and were subsequently sued.
- The court in the 11th district in 2008 allowed more leeway in conducting strip searches of detainees without reasonable suspicion, but not many states and counties changed their policies as a result of that decision.
- Isaiah asked for an interpretation of “general population”. Grace clarified the term as meaning any mingling of inmates, not just in what is commonly thought of as “general population housing”.

- Prior to the *Florence* decision there were strict rules regarding when strip searches could be conducted and on whom. A soccer mom brought in on a minor violation gets strip searched and the courts deem that we need to have reasonable suspicion prior to conducting visual strip searches.
- She emphasized that not separating people, that an agency could, in fact, separate, can lead to litigation.
- She briefly went over the facts of the *Florence* decision. Mr. Florence was a passenger in a car with his wife driving and a child in back seat. The car gets pulled over on a traffic stop and the officer discovers Mr. Florence has failure to pay warrant. However Mr. Florence had actually paid the warrant. He even had proof in his car. But he was taken into custody anyway. It took six days for him to appear before a judge. During the time he was in custody he was strip searched three times, at intake, when he was moved into housing and in a group setting.
- *Florence* has to do with the justification for the strip searches.
- In this decision the court deemed that a jail has a legitimate interest for safety and security. They said that contraband, such as weapons or drugs, is not the only reason to search inmates prior to or during booking, they also said it was justifiable to search for the identification of gang members through tattoos and for the prevention of disease, such as MRSA. All of those needs are legitimate but must be balanced against the intrusion, e.g. pat, clothing or strip searches.
- The court also said that discretion must be given to corrections professionals to make these decisions. Sometimes misdemeanants can be dangerous or serious criminals who are on this occasion picked up for a minor offense. There have been occasions where people get arrested for the purpose of bringing contraband into the facility.
- Florence was a great plaintiff in that he shouldn't have been arrested in the first place.
- The court placed a major caveat to this ruling which essentially said that it is not always reasonable to conduct a strip search on an arrestee "whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population".
- Since *Florence* the courts have declined to dismiss strip search cases where the plaintiff alleges that s/he could have been housed separately but wasn't.
- Rich described classification units in NY, with all single cells where arrestees are housed after they are booked. They have no dayroom access when housed in these units.
- In Grace's interpretation, the decision allows officers to conduct strip search in booking, if there is mingling of inmates.
- Agencies need to document what constitutes reasonable suspicion and have a policy and procedure regarding what documentation is needed. Jim reported that Texas has a strip search "decision tree" and facilities are encouraged to use it.

- When an arrestee is housed there are different criteria for strip searches, especially if the inmate will be mingling with other inmates in the housing area.
- Someone asked if staging arrestees in an open booking area, with constant supervision, is considered mingling? Grace said yes, that arrestees in open booking are mingling. In these cases the rationale for strip searches should be fact specific with clear, facility specific rules.
- Denny commented that each facility needs to create definitions for reasonable suspicion, etc.
- Grace thought it might be safer, litigation wise, to keep more restrictive policies in terms of strip searches, rather than more lenient rules.
- Physical plant can also influence whether or not an agency conducts a strip search.
- Observing an inmate remove his/her clothing, down to panties and bras or underwear, is not considered a strip search, as long as the observer doesn't see the genitals.
- Someone asked what you do if the arrestee isn't wearing under garments. Grace responded that this is an individual circumstance, not having to do with your policy.
- Clothing searches are a powerful tool, in that they are non-intrusive and have the potential to produce contraband.
- Kirstie asked about using cameras in shower or other search areas to watch the officers, as long as there is some sort of privacy screens. Agencies need to have rules to protect the officer doing the search.
- Jim commented that cameras can be your best friend or worst enemy.
- As to the topic of transgender searches Grace felt that the officer should ask the arrestee about their gender prior to the search. These types of searches require specialized training. An agency may want to have two officers present, male and female, if they aren't sure of the gender of the arrestee.
- Grace pointed out that there have been suits involving the unprofessional manner of the search – professionalism is just as important as justification when conducting strip searches.
- In *Haas v Burlington*, a law suit that is still going through the courts even though it was filed before *Florence*, addresses the question of review by a judicial officer: prior to a strip search. Agencies need to consider what that means in their jurisdictions. However, people arrested on a warrant have already been seen by a judicial officer.
- The ACLU recently sent a letter to facilities asking if they were planning on making changes to their strip search policies.

Shackling of Pregnant Inmates

The next topic of discussion involved the shackling of pregnant inmates while they are in labor. Grace referred to a case where an inmate's ankles were shackled together to the bed

during the last stages of labor. The inmate was a nonviolent 25 year old having her second child. Medical staff told the officer not to shackle the inmate. The shackles were removed just as the baby was being born. This act of stupidity caused grievous harm to the inmate including permanent physical injuries, reliance on pain medications for serious long term pain, and the inability to have any more children. It was determined that the officer knew the agency's policies and had training not to do this. The administrative director and the transporting officer were both sued. The officials were not held accountable, just the officer. The officer did not get qualified immunity.

The defense for this act was that the officer did not grasp the seriousness of the situation. Grace told the group that the court said the actions by the officer were malicious and sadistic.

Someone asked about the policy in the jurisdiction regarding shackling inmates in labor? Grace told the group that the policy said that officers should use good judgment, listen to medical staff, and, specifically, pregnant inmates in the final stages labor were not to be restrained. (Refer to summaries of different statutes in the handout in Appendix XVI.). All have restrictions on the use of restraints during labor.

The group made comments about the rules in their jurisdictions.

- Shannon brought up a case where the women threatened to kill the baby and had to be restrained for the safety of the infant.
- Joe told the group that PA uses a flex cuff attached to a leg iron then to the bed for felons in labor.
- Del said that in Iowa the hands of the pregnant inmate can be restrained and the inmate moved in a wheel chair for the well-being of the mother and the child.
- Grace pointed out there is a large list of organizations who have come out against the shackling of pregnant inmates, including the AMA, ACA, BOP, etc. (Refer to Appendix XVI.)
- Isaiah advised the group that prior to finalizing a policy on restraining pregnant inmates agencies should meet with medical staff and get help in writing the policy.
- Some states require medical staff to be present during the strip searches upon return from the hospital.
- Mike told the group that Illinois was one of the first states to say no to the shackling of women during pregnancy following a suit by 80 women saying that were shackled.
- In *Villegas v Metropolitan Government of Nashville and Davidson County* the plaintiff alleged deliberate indifference to a medical need by the act of shackling her during labor and denying her a breast pump given to her by the hospital. The court overturned the summary judgment from the lower court and referred the case for further

disposition. Refer to <http://www.ca6.uscourts.gov/opinions.pdf/13a0059p-06.pdf> for further information.

- Bill referred to a Virginia case, *Fain v Rappahannock Regional Jail*, where the plaintiff alleged she was held in four point restraints while giving birth, but actually the restraints were one leg iron and one handcuff during the birth. A long state statute was developed to address this issue.
- Agencies need to complete a use of force report every time a pregnant woman is restrained. If you don't have a standard addressing this issue – get one.

Postcard Only Rules

Grace began the presentation by addressing jurisdictions allowing only post cards for personal incoming mail for inmates. A few jurisdictions in the room currently have this policy. Grace went on to tell the group that there is a lot of litigation regarding this issue. Justifications used by agencies instituting this policy are that postcards are less likely to contain contraband, are easily readable, and save staff time in processing.

The original cases filed on this issue were pro se and not successful. However, *Prison Legal News*, an organization known for litigiousness took up this cause and has been more successful. In *Prison Legal News v Columbia County* the court found that the county failed to prove that mail presented a security problem and failed to provide a credible explanation of why a postcard only rule was more effective in reducing contraband. The court concluded after a trial that the rationale was not sufficient and was a restriction of the 1st Amendment rights of inmates.

Grace pointed out that if there are security concerns about mail the agency can remove stamps and return address labels and search the contents of the envelopes. The members then commented on this issue.

- Denny reported that all new facilities in Nebraska have email kiosks in the housing units for inmates to use for communications with family and friends. Legal mail is an exception to this. While the systems are more expensive up front, they pay for themselves after 12 years, as the inmates are charged to use the service. It has been a very smooth transition. There are four companies that can provide the kiosks and the service.
- Ken remarked that charging for emails going in and out can be a revenue source.
- Inmate to inmate communication can still be restricted but subject to special permission for family members.
- There still isn't a national standard that addresses post card only mail.

Several other issues came up during this conversation.

- Unsolicited and solicited publications – *Prison Legal News* routinely sends unsolicited publications to inmates that are refused by the facility and then they sue.
- One idea to address this issue is to have the facility subscribe to the publication and make it available to inmates, so they can deny the mass mailings.
- If an agency rejects a publication the inmate and the publisher have the right to know why. There needs to be a legitimate reason and due process rights to appeal the decision.
- If an agency has previously rejected a book or other publication, and has given the inmate and the publisher a chance to appeal, if it is sent again the agency doesn't have to notify the publisher again. It is a good idea to keep a data base of publishers and recipients and rejected materials.
- Publications or books can also be put in the inmate's personal property, so they can have access to them upon release.
- Someone asked if it is legitimate to keep staples out of the facility. It might be, but it is important for the agency to really think about what they do and why they do it.
- Grace also pointed out that the appeal needs to go to someone other than the person that denied the publication in the first place.
- Grace also mentioned a case, *Spence v. Nelson*, where an agency denied mail that was sent from Iran. In this case the inmate received nominal and punitive damages.
- Bill brought up the issue of not allowing photocopies into the jail. No one could figure out the justification for this rule.

Housing Inmates with Serious Mental Health Disorders

Grace told the group that the failure to address the mental health needs of inmates is just as significant as failure to address medical needs. A significant percentage of inmates have mental health disorders and facilities must screen for mental health issues during the intake process.

She told the group that inmates with serious mental health disorders may end up in segregation, which adds obstacles to providing care. Inmates housed in isolation can decompensate very quickly due to a lack of social interaction, sensory deprivation and enforced idleness. In an Indiana case (*Indiana Protection and Advocacy Services v. Commander, Indiana Department of Corrections*) the court said that segregation is harmful to people with mental health issues. The financial consequences for not providing care or allowing inmates to refuse care can be really expensive and a violation of 8th amendment.

The definition of segregation states that inmates spend a majority of their days locked in their cells, up to 23 hours per day. Segregation units contain single cell housing with a bed, sink and/or toilet, small window, and a solid door w/ a food port. Inmates receive meals in cell

and receive one hour of recreation 5-7 days per week in an outdoor and/or indoor recreation area, and exercise separately. There are facilities that put inmates in separate, contiguous cages for recreation. Inmates are not required to go to recreation. Segregated inmates can shower three times per week in some instances and are locked in showers and forgotten or they choose not to take a shower at all. Hand and/or leg restraints are used when they are outside of their cell. Some inmates can get radios or TVs. The average length of stay in a segregation unit is 3 years. Inmates receive only basic programming or no programming, even in their cells. They are frequently refused medical visits.

- Danny told the group that in Lubbock, TX they have a special needs unit which is open, direct supervision and it works well.
- Staff and medical providers need to see why an individual with mental illness engages in misconduct. We can't leave these people to rot.
- Jennifer told the group that they have "behavioral adjustment units" in state facilities in Massachusetts. These were developed as part of a settlement due to the segregation of mental health inmates. Inmates housed in these units now have extra things to do and special programming. They also use something called a limited movement chair to prevent impulsive outbursts.
- Ken said that in Indiana they have mental health units where people co-mingle and sort of self-police and engage in peer therapy.
- Shannon reported that Texas has a "mental health peace officer" course designed to train officers how to deal with the mentally ill.
- Steve said a facility Wyoming started to use journaling for some of their mental health inmates. It helped some of the inmates.
- Kirstie said that Kentucky has a "blue grass triage team". Jail staff does the initial screening and if they get positive answers to series of questions they call the triage line for direction and to start getting these people help. They also have mental health courts.
- Grace reported that according to a study done in New Mexico people with a serious mental illness have a much longer average length of stay.

Montana Update – Steve Metzger

Steve began his presentation by discussing the standards, or lack of standards in MT. (Refer to Appendix XVII for a copy of the PowerPoint.) He gave a brief history of the process.

- In 1977 they started looking at developing jail standards, but not much progress has been made.

- In 1998 they conducted “mock” inspections in three facilities.
- In 2008 they conducted “peer review” training with 16 participants.
- In 2009-2011 they conducted nine peer reviews.
- In 2013 they conducted a peer review of the Roosevelt County Jail following a letter from the ACLU. The complaints involved a very old jail with no yard. The review resulted in the closure of the jail.
- Since 1977 Montana has been in the process of developing standards, with many revisions and updates. However, no standards have been enacted into law, partially due to no funding from the state legislature.
- Sheriffs, jail commanders and jail staff have based the state standards on the ACA core standards. They are still having difficulty getting buy-in from all of the sheriffs.

Ken said that there has been considerable discussion on the Jail Standards Advisory Committee regarding documentation generated from an inspection. He told the story of a jail where no one can see the inmates when they go to bed. They had a suicide in the jail and it was discovered that no one had checked the inmates for 14 hours. The same jail had open electrical extension cords to one female cell. The dispatcher was supposed to watch the inmates over a monitor but nothing was documented.

There has also been discussion on who should receive copies of the inspection reports. Ken told the group about a jail where males and females are housed in cells next to each other, no sprinklers, battery smoke alarms, and only one fire extinguisher for the facility. Jim Muskovich a loss control specialist with the Montana Association of Counties told the group that his organization insures most of these jails. He said that they really need state mandates but they can't seem to get things done. He also mentioned that the ACLU is sniffing around.

Ken told the group that Yosemite County got their new jail because of the ACLU. However they still have a crowding problem and a problem with female housing. They are running their operations on a shoe string. They also contract with two other counties to house inmates from those counties, in addition to housing federal marshal and ICE inmates (72 hour holds). Out of county inmates make up about 20% of their population, most are not women. However, 20%+ of total population is female. The women's prison is just down the road which influences female population numbers.

In the future WY is looking to implement voluntary, announced inspections and develop corrective action plans. Unfortunately there is no follow-up and no mandatory compliance. (Refer to Appendix XVII for a chart listing compliance and non-compliance.)

Currently there is a limited number of peer reviewers and they need to reestablish the “peer review process” and contract with a director/administrator of standards to manage and evaluate peer reviews and update standards.

Danny asked if they ever gave any consideration to developing regional jails. Ken replied that can't seem to reach any sort of agreement to do it. There is some regionalization due to need or jail closures.

Ken also told the group that they looked at private jails. A company out of Texas came and sold a county on building a 400 bed jail, but none of the other counties would put their inmates in it. It is still sitting there empty. The jail had no natural lighting. The Crow Tribe offered to buy it, as long as the acreage was sovereign, but that didn't work out.

Ken then briefly discussed the future of the standards and jails in Montana.

- There are geographic impediments to regional jails, due to distances between counties
- Jails being built right now in Montana are using ACA Core standards.
- The Montana Sheriffs' and Peace Officers' Association (MSPOA) is opposed to enacting jail standards. Counties just can't seem to agree on anything. In MT there is a culture of independent thought and no one wants to compromise, "this is my county and I will run it the way I want".
- So far it hasn't cost a lot for the inspections that have been done.
- One idea is to hire an executive director for MSPOA to help guide them into the future
- MACO is offering a 5% rebate on their insurance premiums, if the county adopts the standards, but the sheriffs don't care, it's not enough money.
- Currently training for correctional officers is not ongoing. Sheriffs don't send people to the training – they just won't do it.

Hotel and Class Evaluations – Danny Downes

Danny passed out the evaluation forms for the hotel and the training facilities. He asked the group to make note of no air conditioning in the room on Tuesday and erroneous charges to credit cards at the hotel.

Dismantling of a Jail Inspection Program – Tom Vogel

Tom took the group through the systematic dismantling of the Jail Inspection Program in the State of Michigan. (Refer to Appendix XVIII for a copy of the PowerPoint.)

- In 1973 12.5 staff in the Department of Corrections (DOC) provided inspection services to 83 counties.

- In 1975 the state developed very detailed rules in three areas – planning, construction and operations.
- In 1998 the DOC replaced old rules with more streamlined set rules. Inspections were still under the DOC and staff was civil service which provided job protection.
- There were many changes to the MI Office of Jail services from 1975 - 2010
 - In 1979 they passed the Headlee Amendment which, in effect, said that the state can't impose rules on counties unless they are going to pay for it.
 - All of the inspectors were moved to the compliance unit after three major prison riots and the state began throwing money at the consent decree.
 - The focus on jails was waning and there was a new emphasis on prisons.
 - The state began hiring and promoting people right and left.
 - There was a big "get tough on crime movement" which resulted in MI being in the top five states in per capita inmate population.
- In 2010 major operational changes were made in the County Jail Services Unit.
 - Tom was transferred to physical plant operations along with another auditor.
 - As all funding for inspections comes from the general fund it appeared that cuts were on the horizon
- In 2012 the state proposed changes that are now being considered, including giving sheriffs the ability to just send a statement attesting to their compliance, with no physical inspection.
- Tom presented a list of compliance rates from 2005 (71% full compliance) to 2012 (67% full compliance).
- Over time there have been longer time frames between inspections.
- More changes for 2013 are now being considered. These changes can influence fire safety in jails around the state.
- The changes involve two options: option A, a self-audit or option B peer inspections.
- Option A (refer to Appendix XVIII) uses Survey Monkey and allows the agency to complete the self-audit questions. They are sending Survey Monkey surveys to 53 jails last inspected in 2011 and they will send a similar survey to more jails the next year.
- Option B utilizes volunteers from the MI Sheriff's Association to conduct site reviews and report their findings to the MDOC.
- Local jails still have a working relationship with MDOC.
- MDOC is instituting a program called "Virtual Prisons". In the program state prisoners serve their prison time in a county jail. So far 11 jails have signed contracts with the state for \$33-\$35 per inmate day.

Bill spoke about changes in his organization in VA. The state is trying to eliminate the BOC, but through good lobbying efforts they have still maintained inspections in jails.

Iowa On-Line Incident Reporting – Delbert Longley

Delbert presented the group with a brief overview of a new on-line incident reporting system that is just getting up and running in Iowa. (There are no materials for this presentation. For further information please contact Del at Delbert.Longley@iowa.gov)

Del told the group the new on-line incident reporting system is fully secured. Each jail will have access to the system; with two people per facility having the ability to do the on-line reporting or shift supervisors in larger jails.

- He accessed the system and showed the group the on-line forms.
- The jail representative entering information in the system can go back in and change or add information later
- The form includes information on the type of incident, date, time, and location, inmate information including date of birth and gender. The system will allow the user to enter multiple inmate names, in case of a group disturbance.
- The user may add photo, tattoos, staff name(s), information on how the incident was discovered, and a short narrative describing the incident.
- Facilities can use search features to pull up incidents by name, date, etc. They can also pull up the incidents involving a specific inmate.
- Del told the group that the system has a report function, by date parameters that can pull up incidents in the whole state by county.
- Counties will be required to enter a report following every use of force incident.

Del took questions from the group.

- Someone asked if the user and the reviewer can track edits when changes are made to a report. Del doesn't know yet.
- If every county in the state has to do this, how did they talk them into using this system? The inspectors have a great relationship with the Iowa Sheriffs' Association; in turn the sheriffs communicate with their people. He sells the benefits of the system to the sheriffs.
- Kirstie asked if they have problems with accuracy. KY has serious problems receiving accurate reports. Del responded that the online reports are more informative than the old written reports and his agency has statutory authority to mandate accurate reports. Kirstie told the group that in KY there are no repercussions for noncompliance.
- Shannon said that in Texas they put all incidents of noncompliance on their website – which can result in a liability issue for the noncompliant facility.

Evaluation and Close-out – Danny Downes

Danny thanked the group for their attendance and contributions to the Network meeting. He asked everyone to talk to their colleagues about joining the Network and attending the meeting next year. He apologized again for the conditions in the room during the Tuesday session.

An evaluation will be sent to everyone via Survey Monkey. He asked the members to please fill out the survey so, if needed; we can make improvements to the next meeting.

Danny reminded everyone of New Jail Inspector's training March 24-27, 2014. Please check the NIC website, after October 1 for more information and registration.

He asked the members to please use the Chief Jail Inspector's Network – it is your network and it provides members the opportunity to post examples of unique things that other members might be interested in.

Danny is doing a remake of NIC's direct supervision DVD, *Jails in America*. The old version of the video is available at <http://nicic.gov/Library/020741>. He is looking for a jail that has examples of all three types of supervision: linear, podular remote, and direct supervision. They will need to do video shoots in the facilities. They will be using the same script but make the film look more current.

Danny also reported that the Jails Division has finished the pilots for all of the direct supervision training for officers, supervisors and administrators. That training will be available soon so check the NIC website.

Danny then took suggestions from the members for the agenda for next year's meeting.

- Someone suggested mental health issues related to veterans, e.g. dealing with post-traumatic stress disorder (PTSD). It was suggested that to save money we could get someone locally (Denver area) to present on this issue, maybe Wounded Warriors. There is a speaker from Minnesota who talks about problems with vets coming home. The group thought this topic may not be specific enough. Joe remarked that they have developed veteran's courts in MA.
 - The real question is why vets are being arrested and what do you do about them, if anything, when they are in-custody. Rich would be willing to do some research on this topic and what is going on in this area.
 - Kristi mentioned developing partnerships with veterans' administration in Wisconsin.

- Hot Topics – one member will be selected to discuss how these topics have changed over the last year. They will have two hours to talk about the topic at the beginning of the meeting and Danny will facilitate the hot topics discussion. The following suggestions were made for Hot Topics.
 - PREA
 - Legal Issues
 - Critical issues – staffing, budget, medical issues
 - How jail inspections are being done in other states via presentations from other states, e.g. Bill in Virginia, Kirstie in Kentucky, and Jim in Montana.
- Danny told the group that we will be back to a two day meeting next year.
- There will be no legal update next year as we can only afford one person to present. One of the members told the group that Carrie Hill said she would like to join the group as a participant but her vendor status may prohibit this.

Danny thanked the group for their attentiveness and participation and the meeting was adjourned.

APPENDICES

APPENDIX I

REVISED AGENDA

Chief Jail Inspectors' Network

July 16-18, 2013

National Corrections Academy, Aurora, CO

Tuesday, July 16

8:30 AM Introductions.....Danny Downes

9:00 AM The Prison Rape Elimination Act.....Peggy Ritchie
Elizabeth Layman
Josh Delaney
Dee Halley

12:00 PM LUNCH

1:30 PM PREA Panel Discussion (continued)

5:00 PM Adjourn

Wednesday, July 17

8:00 AM Introduction and Overview Danny Downes

8:30 AM NIC Information Center Overview.....Susan Powell

9:30 AM NSA Update Denny Macomber

10:00 AM Jail Standards Update.....Kathy Black-Dennis

10:30 AM Mentoring and Technical Assistance Kenneth Whipker

11:00 AM Office of Juvenile Justice Delinquency Prevention (OJJDP) Update Tim Thompson
..... Richard Kinney

12:00 PM **LUNCH**

1:30 PM Affordable Care Act Denny Macomber

2:30 PM BJA 2012 PREA Demonstration Grant.....Kristi Dietz

3:30 PM Texas Commission on Jail Standards Overview.....Jimmy Barton

5:00 PM **Adjourn**

Thursday, July 18

8:00 AM	Legal Issues	Grace Philips
12:00 PM	LUNCH	
1:30 PM	Montana Update	Steve Metzger
2:30 PM	Dismantling of a Jail Inspection Program	Tom Vogel
3:00 PM	Iowa On-Line Incident Reporting.....	Delbert Longley
3:30 PM	Discussion/Planning.....	Group
4:30 PM	Evaluation/Closeout.....	Danny Downes
5:00 PM	Adjourn	

APPENDIX II

Final Participant List



Danny Downes
Linda DeLaura

PARTICIPANT LIST

13J2701

Chief Jail Inspectors' Network Meeting

Aurora, CO

July 16-18, 2013

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APPENDIX III

PREA Agenda

CHIEF JAIL INSPECTORS' NETWORK MEETING
Prison Rape Elimination Act – Panel Discussion
Agenda - July 16, 2013

8:30 – 9:00 a.m.	<ul style="list-style-type: none"> ● Introductions <ul style="list-style-type: none"> ○ Participants ○ Panel Members ● Logistics ● Schedule ● Agenda 	<p>Danny Downes</p> <p>Peg Ritchie</p>
9:00 – 9:30 a.m.	<ul style="list-style-type: none"> ● “Burning Issues” – Class Exercise ● Overview of latest PREA Information <ul style="list-style-type: none"> ○ Timeline – Significant dates and deadlines 	<p>Dee Halley</p> <p>Beth Layman</p>
9:30 – 10:00 a.m.	<ul style="list-style-type: none"> ● How PREA impacts Jails <ul style="list-style-type: none"> ○ applicability of PREA to jails ○ incentives for compliance ○ contracts to hold I.C.E. and/or state inmates ○ how jails fit in Governor certification of compliance 	<p>Josh Delaney</p>
10:00 – 10:30 a.m.	<ul style="list-style-type: none"> ● Group work – <ul style="list-style-type: none"> ○ Review sections of Standards 	
10:30 – 11:15	<ul style="list-style-type: none"> ● Discussion of selected <i>PREA Standards for Adult Prisons and Jails</i>, identified in “Burning Issues” exercise & Survey Monkey <ul style="list-style-type: none"> ○ Youthful Inmates ○ Cross-gender searches, viewing, announcements ○ Investigations ○ Training for staff, contractors, volunteers 	<p>Beth Layman</p>
11:15 – 12:00 p.m.	<ul style="list-style-type: none"> ● Response to Questions from Workgroup 	<p>Panel</p>
12:00 – 1:30 p.m.	LUNCH	
1:30 – 2:00 p.m.	<ul style="list-style-type: none"> ● Discussion of investigations in confinement settings <ul style="list-style-type: none"> ○ Criminal investigations ○ Administrative Investigations ○ Training for investigators 	<p>Beth Layman</p>
2:00 – 4:00 p.m.	<ul style="list-style-type: none"> ● Audits and Compliance <ul style="list-style-type: none"> ○ Audit Instrument – Review of Components ○ Auditors: who, how, when ○ Reciprocity of audits 	<p>Josh Delaney and Beth Layman</p>
4:00 -5:00 p.m.	<p>Overview of PRC Update on NIC work Close-out of “Burning Issues” Evaluations</p>	<p>Peg Ritchie Dee Halley</p>

APPENDIX IV

Staff Biographies

Chief Jail Inspectors' Network Meeting

13J2701

July 16-18, 2013

Aurora, Colorado

STAFF BIOGRAPHIES

Joshua C. Delaney

Senior Trial Attorney, Civil Rights Division, U.S. Department of Justice

Joshua Delaney joined the Department's Civil Rights Division in 2005, enforcing the Civil Rights of Institutionalized Persons Act (CRIPA) and the Violent Crime Control and Law Enforcement Act of 1994. Mr. Delaney's practice has focused on investigating and monitoring conditions of confinement in detention and correctional facilities, with an emphasis on juvenile justice facilities. Mr. Delaney is the Vice Chair of the Attorney General's Prison Rape Elimination Act (PREA) Working Group, and has conducted numerous national and regional training sessions and webinars on the final PREA standards and the PREA auditing process.

Prior to joining the Department, Mr. Delaney practiced complex litigation and regulatory affairs at the law firm WilmerHale. Mr. Delaney has received the Attorney General's Award for Distinguished Service, two Special Commendations from the Department's Civil Rights Division, and a number of Special Achievement Awards and Meritorious Awards. Mr. Delaney received a Bachelor of Arts degree from Georgetown University, and a Juris Doctor degree from the University of Baltimore, School of Law.

Danny Downes...

Danny came to the National Institute of Corrections from the Lubbock County Sheriff's Office in March 2011 on an intergovernmental personnel agreement to serve as a correctional program specialist. In Lubbock County, he was the chief deputy of the detention division and was responsible for the operation of the Lubbock County Detention Center, a state of the art, 1512-bed direct supervision jail.

He holds an associate's degree in electronics from National Education Center of Southern California. He also has accumulated 64 hours of college credit toward a degree in public administration from Redrocks Community College in Denver, Colorado. He currently has over 3,500 hours of TCLEOSE credit for continuing education in law enforcement and corrections training.

Dee Halley...

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Dee was involved in local corrections for 17 years through the Sheriff's Department in Boulder County, Colorado. During this time she served as a correctional officer, accreditation manager, transition coordinator, work release coordinator, and classification supervisor. From 1981 through 1986, Dee served as the NIC Area Resource Center Grant Coordinator.

In May of 1990, she began work as a Correctional Program Specialist for the NIC Jails Division. The majority of her work involved coordination of the Facility Development Program which included conducting plan reviews, and acting as the liaison to the American Institute of Architect's Committee on Architecture for Justice.

In August of 1994 Dee transferred to the NIC Academy Division. Her primary responsibility was the coordination of correctional leadership and management programs. To enhance the delivery of these programs, she has been qualified to administer both the Benchmarks Leadership 360 assessment and Myers-Briggs Type Indicator (MBTI). In addition she coordinated programs about evaluation strategies, facility planning for juvenile and tribal detention facilities, and managed the Correctional Core Competency Model project.

In March of 2002, Dee transferred to the NIC Special Projects Division to coordinate the Native American and Alaskan Technical Assistance Project (NAATAP). In late 2003 she was assigned to manage the Institute's activities under the Prison Rape Elimination Act (PREA). As the PREA Project Manager Dee manages multiple cooperative agreements, prepares reports for Congress, represents the Institute in its role as a Federal partner, and serves on the Attorney General's Work Group which drafted the final PREA standards and continues to develop interpretive guidance.

Elizabeth Price Layman...

Ms. Layman's career includes 9 years as a police officer/detective in Arlington, Virginia, including patrol, sexual assault investigations, and forensics. Ms. Layman spent 16 years with Florida Department of Corrections and Florida Parole Commission as a Parole Officer and Administrative Hearing Officer, conducting hearings with thousands of inmates in prisons and jails, and as a special investigator for the Office of Florida Governor.

Since 1998, Ms. Layman has been President of Price Layman, Inc., a criminal justice consulting firm. She has worked as consultant with the U.S. Department of Justice providing technical assistance and training on investigations, sexual misconduct and sexual abuse of inmates for more than 300 jail administrators, corrections and law enforcement agencies. Ms. Layman developed and delivers the following curricula:

Training for Investigators of Staff Sexual Misconduct; The Prison Rape Elimination Act

of 2003: Impact on Law Enforcement; Preventing and Responding to Sexual Abuse in Tribal Detention Facilities; PREA: Conducting Investigations of Sexual Abuse of Inmates in Confinement Settings. Ms. Layman has authored or co-authored the following publications: *Resource Guide for New Wardens*; *PREA – Policy Development Guide for Sheriffs and Chiefs*; *Staff Sexual Misconduct with Offenders: Policy Development Guide for Community Corrections*; Ms. Layman continues to work with corrections and law enforcement agencies across the country, providing training and technical assistance on the issues of staff sexual misconduct and The Prison Rape Elimination Act, as well as policy development and review. Ms. Layman has a Bachelor's Degree in Sociology from Virginia Tech.

Peggy L. Ritchie

Peggy Ritchie joined NCCD as a Senior Program Specialist in the fall of 2012. She works specifically with Field Initiated Technical Assistance and support areas related to audits and curriculum development.

Peggy recently retired from the California Department of Corrections and Rehabilitation (CDCR) as Deputy Director, Correctional Health Care Services and was an appointee of Governor Arnold Schwarzenegger's administration. Ms. Ritchie served as a Senior Policy and Budget Analyst for the California Legislative Analysts' Office prior to her appointment. Peggy has over twenty years of service in the corrections field including more than seven years with the National Institute of Corrections, U.S. Department of Justice, including Technical Assistance Manager for the National Academy of Corrections. Peggy was the Deputy Director of the Office of Law Enforcement and Technology Center Border Research Center, U.S. Department of Justice, San Diego, California.

As Deputy Director for Ohio's Department of Rehabilitation and Corrections (ODRC) her responsibilities included overseeing the implementation of a Technology Transfer Committee, Information and Operational Technologies, Research, Offender Records, and Strategic Planning. Peggy was Vice President of Research and Strategic Planning for ORIANA House, Ohio. Peggy also served over seven years in the Arizona Department of Corrections including activating a medium custody prison on the Mexican border. Governor Bruce Babbitt named her Outstanding Woman of the Year during her tenure with Arizona. Peggy was the Director of La Clinica Del Pueblo Behavioral Health Center, Superior, Arizona and has held other positions in Community Corrections, not-for-profits, and academics.

Peggy provided consulting on prison operations and community corrections issues during the emergence of democracy in Latvia and Lithuania. Peggy represented the International Community Corrections Association (ICCA) at the United Nations Criminal Justice Non-Governmental Organization (NGO) for over five years. She is a long-term member of the American Correctional Association, ICCA, and the International Prison and Corrections Association. (IPCA). Peggy has an MBA from the University of Phoenix, Arizona and a Master's degree in Education (Counseling and Guidance) from North Dakota State University; Peggy has a Bachelor's Degree of Science, from the University of North Dakota.

APPENDIX V

The Prison Rape Elimination Act

NATIONAL PREA RESOURCE CENTER



CHIEF JAIL INSPECTORS' NETWORK

PREA – UPDATE FOR JAILS

NATIONAL INSTITUTE OF CORRECTIONS
AURORA, CO
JULY 16, 2013

WHAT ARE YOUR



BURNING ISSUES

NATIONAL PREA RESOURCE CENTER

PANEL

JOSHUA DELANEY
Senior Trial Attorney, U.S. Dept. of Justice, Vice-Chair PREA Working Group

DEE HALLEY
National Institute of Corrections, Research and Information Services, Correctional Program Specialist

PEGGY RITCHIE
National Council on Crime and Delinquency
National PREA Resource Center
Senior Program Specialist

ELIZABETH LAYMAN
President, Price Layman Inc.
Criminal Justice Consultant

NATIONAL PREA RESOURCE CENTER

History of PREA and Development of the Standards

2003: PREA legislation passes

2004: First meeting of the National Prison Rape Elimination Commission (NPREC)

June 2009: Report and draft standards published by NPREC

2009-2012: Establishment and Convening of DOJ PREA Working Group

Feb. 3, 2011: Draft DOJ standards released

May 17, 2012: Final DOJ standards released

June 20, 2012: Final standards published in the Federal Register

NATIONAL PREA RESOURCE CENTER

INTRODUCTION

- **LOGISTICS**
- **AGENDA**
- **SCHEDULE**
- **INTRODUCTIONS OF PARTICIPANTS, PANEL**

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PREA Compliance Timeline

August 20, 2012: Standards applicable to state and local facilities

August 20, 2013: Three-year audit cycle begins

October 1, 2013: First date on which federal grant funds may be impacted (FY 2014)

August 19, 2014: One-third of facilities must be audited

August 19, 2015: Next one-third of facilities must be audited

August 19, 2016: First three-year audit cycle complete: final third of facilities must be audited

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PREA – APPLICATION FOR JAILS

For county, municipal, and privately run agencies that operate confinement facilities, PREA lacks any corresponding sanctions for facilities that do not adopt or comply with the standards. (page 181)



Group Workshops – Review of Standards

- Group 1: Prevention Planning §115.11 – 115.18
- Group 2: Responsive Planning §115.21 – 22
Training and Education §115.31 – 35
Screening for Risk §115.41 – 43
- Group 3: Reporting §115.51 –54
Official Response §115.61 - 68
- Group 4: Investigations §115.71 –73
Discipline §115.76 –78
Medical and Mental Care §115.81 –83
Data Collection and Review §115.86 –89



Compliance

Despite absence of statutory authority, other consequences may provide incentives for voluntary compliance.

- May influence the standard that courts will apply in legal and constitutional claims
- Major accreditation organizations may need to comply with the standards as a condition of accreditation. (page 181)
- Facilities that contract to hold state or federal inmates risk losing those contracts.



OVERVIEW OF SELECTED PREA STANDARDS FOR ADULT PRISONS AND JAILS



Local Jails and Governor Certification of Compliance

If jail holds state inmates under **contractual** agreement, they will be included in the Governor’s certification of compliance.

Unified systems (jail and state prisoners under authority and control of state government), jails included



Definitions

Page 192
Important distinctions:

- Juvenile (page 193)
- Youthful inmate (page 195)
- Youthful detainee (page 195)

Definitions of sexual abuse (page 195)

- Sexual abuse of an inmate, detainee by another inmate, detainee
- Sexual abuse of an inmate, detainee by staff, contractor, volunteer
- Voyeurism of staff, contractor, volunteer (page 196)
- Sexual harassment



Youthful Inmates in Adult Facilities

- No inmate under 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, maintain either “sight and sound separation” –*i.e.*, preventing adult inmates from seeing or communicating with youth – or provide direct staff supervision.
- Avoid placing isolation to comply
- Absent exigent circumstances, must afford certain exercise, education and programming to extent possible.



Staffing of Juvenile Facilities

- Secure juvenile facilities - 1:8 ratio of security staff to resident during resident waking hours
- 1:16 during resident sleeping hours except during limited and exigent circumstances.
- Deviations from the staffing plan must be documented.
- Facilities have until October 1, 2017, to achieve compliance unless already obligated by law, regulation, or judicial consent decree.



Youthful Inmates in Adult Facilities

Direct Staff Supervision means:

- Security staff are in the same room
- And within reasonable hearing distance
- Of the resident or inmate.



Cross-Gender Searches and Viewing – Adult Facilities

- Phased-in ban on cross-gender pat-down searches of female inmates absent exigent circumstances. (*August 2015, or August 2017 for facilities whose rated capacity is less than 50 inmates*).
- In adult facilities, no restrictions on females conducting pat-down searches of males.
- No cross-gender viewing inmates in showers and while performing bodily functions, except in exigent circumstances or incidental to routine cell checks.



Youthful Inmates in Adult Facilities

- Standard is about the AGE of the inmate, regardless of other factors.
- Court designations, adjudications as adults, state laws, do not override the PREA requirement for sight, sound, and physical separation.
- Some jails are finding creative ways to meet this standard (reciprocal agreements to exchange inmates, changing state law, etc.)



Cross-Gender Searches and Viewing

- Staff of the opposite gender must announce their presence when entering an inmate housing unit.
- No cross-gender pat-down searches of both female and male residents in all **juvenile** facilities.
- No cross-gender strip searches and visual body cavity searches except in exigent circumstances or when performed by medical practitioners, in which case the searches must be documented.



**INVESTIGATIONS
OF SEXUAL ABUSE
OF INMATES
IN CONFINEMENT
SETTINGS**

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INVESTIGATIVE PROTOCOL

Application of Miranda and Garrity

Key Points – Miranda

- Must be an interrogation (accusatory)
- Person must be in custodial situation
- Interrogation is by law enforcement

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**SPECIALIZED TRAINING: INVESTIGATORS
(115.34)**

Investigators must have training in the following:

- General training for all employees
- Conducting investigations in confinement setting
- Interviewing sexual abuse victims
- Miranda & Garrity – use and application
- Evidence collection – techniques, protocols
- Criteria & evidence required to substantiate administrative and/or criminal

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INVESTIGATIVE PROTOCOL

Application of Miranda and Garrity

Key Points – Garrity

- Applies to public employees
- Compelled statements taken only after consult with prosecutor (if criminal)
- Nothing in compelled statement may be used in criminal investigation or prosecution.

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**EVIDENCE PROTOCOL AND FORENSIC MEDICAL
EXAMINATIONS (115.21 – 115.22)**

- Follow uniform evidence protocol for physical evidence
- Offer all victims forensic medical exam (SANE, SAFE or other qualified medical personnel)
- If requested, victim advocate accompanies victim through exam
- Policies to ensure investigations

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PROFESSIONAL BOUNDARIES

IMPORTANT FOR INVESTIGATORS:

- Reported allegations may appear as minor infractions.
- Investigation may reveal that it is just the tip of the iceberg.
- Must dig deeper and not just stop at “he said, she said”.

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CRIMINAL & ADMINISTRATIVE INVESTIGATIONS (115.71 – 115.73)

ADMINISTRATIVE ALLEGATIONS:

- Did staff actions or failure to act contribute to abuse?
- Maintain reports for as long as abuser employed, or in facility, PLUS 5 years
- Complete investigation regardless of resignation or departure

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REPORTING TO INMATES (115.73)

- If alleged staff abuser reassigned, suspended, no longer employed
- If staff indicted
- If staff convicted
- If inmate abuser indicted
- If inmate abuser convicted

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CRIMINAL & ADMINISTRATIVE INVESTIGATIONS

- Criminal investigation proceeds first
- Suspend administrative, if criminal act involved
- Criminal conviction prima facie evidence to substantiate administrative case

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Staff Discipline (115.76)

Termination is presumed for any sexual touching

All **criminal charges reported** to law enforcement and licensing agencies

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EVIDENCE STANDARD FOR ADMINISTRATIVE INVESTIGATIONS (115.72)

The evidentiary standard for administrative investigations shall be no higher than a **preponderance of the evidence**.

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CENTER

Inmate Discipline (115.77)

Agency may discipline per policy if consensual

Inmate-on-inmate sexual activity – if consensual – not sexual abuse

If non-consensual, criminal action considered

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AUDITS



Who Can Conduct Audits

§115.402

(a) An audit shall be conducted by:

- (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government)
- (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
- (3) Other outside individuals with relevant experience



AUDITS - WHEN

Three-year audit cycle: each facility audited once every three years.

- 1st year, one third of each TYPE of facility within the agency.
- 2nd year, audits of the second third.
- 3rd year, audits of the last third.



Auditor Certification

- Auditors will be certified in each of the four facility types based on prior experience:
 - » Adult Prisons/Jails
 - » Community Confinement
 - » Juvenile
 - » Lockups
- All auditors shall be certified by DOJ
- DOJ will certify auditors after they have been trained (normally within 30 days)
- Background Check



Correction Action

For facilities found out of compliance:

- an automatic 180-day corrective action period
- the auditor will work with agency to develop a plan of correction action
- re-audit after 180 days



Auditor Certification Training

Pilot training completed in June, 2013.

Additional trainings to be held in November 2013, and several in 2014 (approx. 100 per session).

Training itself is currently free, but may be subject to a fee in the future.

All travel costs, hotel, meals, etc. are the responsibility of the attendee.

Applications will be available at the PREA Resource Center website.



Auditor Certification, continued

DOJ maintains controls on the audit certification process.

ALL PREA auditors must be certified by the DOJ every three years.

- Auditors subject to de-certification for cause.
- Auditors required to maintain all documents, notes, media, and other information used in making his or her audit determinations.



Reciprocal Agreements

No restrictions on circular reciprocal agreements among agencies to conduct audits.

Eg. Jail A conducts audits for Jail B;
 Jail B conducts audits for Jail C;
 Jail C conducts audits for Jail A.

However, straight reciprocal audits, such as Jail A conducts audits for Jail B and Jail B conducts audits for Jail A, there are some restrictions.



Finding an Auditor

DOJ will maintain a current list of all certified auditors with their contact information.

Each agency must find its own auditor, make the contact, and negotiate for the audit.

By end of 2014, anticipated that there will be several hundred certified auditors.



Using the Audit Instrument



Auditor Compensation

- Terms of contract negotiated between agency and auditor
 - Compensation
 - Number of facilities
 - Scheduling of audit activities
 - Additional staff, if required
- DOJ will not set auditor fees
- Agencies are encouraged to have significant discussions with auditors prior to contracting



Audit Instrument Documents

- Process Map
- Checklist of Documentation
- Pre-Audit Questionnaire
- Auditor Compliance Tool
- Instructions for PREA Audit Tour
- Interview Protocols
- Auditor Report
- Handbook of PREA Prisons & Jails Standards Compliance Measures

The following link will take you to the complete list of documents and an explanation of each on the PRC website:
<http://bit.ly/12HDo74>



PRE-AUDIT QUESTIONNAIRE

**PREA AUDIT: PRE-AUDIT QUESTIONNAIRE
ADULT PRISONS & JAILS**




Original date completed: _____
 Status received: _____
 Completed for: _____
 Title: _____
 State of last agency PREA audit (if applicable): _____
 Date of last facility PREA audit: _____

AGENCY INFORMATION (IF APPLICABLE)

Name of agency: _____
 Reporting authority of parent agency or physical address: _____
 Physical address: _____
 Mailing address: _____
 Facility address: _____
 Telephone number: _____

The agency is: Military County Federal
 Private for profit Municipal State
 Private not for profit

Agency website (and other major website): _____ Upload Attachment

Agency Chief Executive Officer
 Name: _____ Title: _____
 Email address: _____ Telephone number: _____

Agency With PREA Coordinator
 Name: _____ Title: _____
 Email address: _____ Telephone number: _____

PREA coordinator reports to: _____
 Number of compliance monitors who report to PREA coordinator: _____
 Agency website with PREA information: _____
 Is the agency accredited by any other organization? Yes No

Other: _____

Number of volunteers and individual contractors currently authorized to enter the facility: _____
 Number of investigators the agency currently employs for investigating allegations of sexual abuse: _____

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Sample from PRE-Audit Questionnaire

REPORTING		
§115.51 – Inmate reporting.		
115.51 (b)-1 The agency provides at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES Page/Section: UPLOAD DOCUMENTATION OF AGREEMENT WITH OUTSIDE PUBLIC OR PRIVATE ENTITY RESPONSIBLE FOR TAKING REPORTS

Sample from PRE-Audit Questionnaire

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS		
§115.41 – Screening for risk of victimization and abusiveness.		
115.41 (a)-1 The agency has a policy that requires screening (upon admission to a facility or transfer to another facility) for risk of sexual abuse victimization or sexual abusiveness toward other inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SCREENING POLICY Page/Section: (fill in)

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Corresponding Sample - Auditor's Compliance Tool

115.51 (b) - The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Pre-Audit: QUESTIONNAIRE: The agency provides at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency. YES or NO (FROM 115.51(b)-1)</p> <p>The agency has a policy requiring inmates detained solely for civil immigration purposes be provided information on how to contact relevant consular officials and relevant officials of the Department of Homeland Security. YES or NO (FROM 115.51(b)-2)</p> <p>POLICY: RELEVANT POLICY (FROM 115.51(b)-1) Refer to page/section: (FROM 115.51(b)-1)</p> <p>RELEVANT POLICY (FROM 115.51(b)-2) Refer to page/section: (FROM 115.51(b)-2)</p> <p>OTHER DOCUMENTATION: DOCUMENTATION OF AGREEMENT WITH OUTSIDE PUBLIC OR PRIVATE ENTITY RESPONSIBLE FOR TAKING REPORTS (FROM 115.51(b)-1)</p> <p>AUDITOR NOTES:</p> <p>Audit: INTERVIEW GUIDE(S): PREA Compliance Manager – Q: 7, 8 Random Sample of Inmates – Q: 9, 10</p> <p>AUDITOR NOTES:</p>
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Corresponding Sample from Auditor's Compliance Tool

115.41 (a)-All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Pre-Audit: QUESTIONNAIRE: The agency has a policy that requires screening (upon admission to a facility or transfer to another facility) for risk of sexual abuse victimization or sexual abusiveness toward other inmates. YES or NO (FROM 115.41(a)-1)</p> <p>POLICY: SCREENING POLICY (FROM 115.41(a)-1) Refer to page/section: (FROM 115.41(a)-1)</p> <p>AUDITOR NOTES:</p> <p>Audit: INTERVIEW GUIDE(S): Staff Responsible for Risk Screening – Q: 1 Random Sample of Inmates – Q: 7</p> <p>AUDITOR NOTES:</p>
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NATIONAL PREA RESOURCE CENTER

Sample from Checklist of Policies/Procedures/Documents

Standard	PRE-AUDIT	DURING AUDIT
§115.41 – Screening for Risk of Victimization and Abusiveness	<input type="checkbox"/> Agency policy governing screening of inmates (upon admission to a facility or transfer to another facility and reassessments). <input type="checkbox"/> Screening instrument used to determine risk of victimization or abusiveness. <input type="checkbox"/> Records of initial assessment and reassessment for risk of sexual victimization or abusiveness.	<input type="checkbox"/> Records for inmates admitted to the facility within the past 12 months for evidence of appropriate screening. <input type="checkbox"/> Records of reassessment within the past 12 months for risk of sexual victimization or abusiveness.

Interview Protocols - Staff

- Agency Head (or Designee)
- PREA Coordinator
- PREA Compliance Manager
- Warden (or Designee)
- Random Sample of Staff
- Specialized Staff*




Questions & Answers



Interview Protocols - Inmates

- Random Sample:
 - At least 10 inmates
 - One from each housing unit
 - Others as needed
- Specific Sample:
 - LGBTI, Youthful Inmates, Disabled, LEP, Seg. Housing, Reported Sexual Abuse, Disclosed at screening.



National PREA Resource Center (PRC) www.prearesourcecenter.org

Mission and Methods

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents and services to victims and their families.

- Training and Technical Assistance
- Auditor Training
- Website and Resource Library



National PREA Resource Center

For more information about the National PREA Resource Center, visit www.prearesourcecenter.org. Direct questions to info@prearesourcecenter.org

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PRC Library

Search the PREA Library for Articles and Resources:

<p>LEGAL</p> <p>In this section of the library you will find information about the Prison Rape Elimination Act of 2003 and related laws and legal issues. See all Legal articles ></p>	<p>NEWS COVERAGE</p> <p>In this section of the library you will find all PREA-related news articles, including news about the law, implementation of standards, and federal and local initiatives. See all News Coverage articles ></p>	<p>Library Sections</p> <ul style="list-style-type: none"> • Recent Additions • Legal • News Coverage • Policy & Practice • Research • Resources • Standards 
<p>POLICY & PRACTICE</p> <p>In this section of the library you will find sample PREA-related policies and PREA policy development guides. See all Policy & Practice articles ></p>	<p>RESEARCH</p> <p>In this section of the library you will find federally funded and academic reports and articles on a range of PREA-related topics. See all Research articles ></p>	
<p>RESOURCES</p> <p>In this section of the library you will find tools such as training materials, handbooks, policy development toolkits, and a list of resources for survivors. See all Resources articles ></p>	<p>STANDARDS</p> <p>In this section of the library you will find the federal PREA standards and information about the development, implementation, compliance with, and enforcement of the standards. See all Standards articles ></p>	

Targeted TTA

Methods of Delivery

- Webinars
- Publications
- Regional Trainings
- Field-initiated Training and Technical Assistance
- Auditor Training
- BJA PREA Demonstration Sites
- Other technological platforms (such as e-Learning Courses)



Purpose of the toolkit

- Provide basic information about PREA and its implementation;
- Offer a self-assessment tool for jail administrators and their staff members to assess priority areas of implementation and develop action plans for PREA implementation;
- Contain resources for further reading and/or information (e.g., national reports and articles, materials developed and used by other jails, etc); and
- Provide training curriculum and policy guidance.



Request Field Initiated Training and Technical Assistance

Request assistance by completing web form on the PRC website (www.prearesourcecenter.org) and clicking "Request for Assistance on the sidebar"



Toolkit Contents

- ☐ Checklists to conduct a self-assessment of their implementation efforts in the following areas:
 - ☐ Administration
 - ☐ Inmate Management/Services
 - ☐ Screening
 - ☐ Reporting
 - ☐ Investigations
 - ☐ Training and Education
 - ☐ Data Collection
- ☐ Additional content in the following areas:
 - ☐ General Information about the Law
 - ☐ Definitions and Terms
 - ☐ Developing Strategies to Comply with PREA Standards
 - ☐ PREA Background Information



ToolKit for Jails

Available at www.nicic.gov

- BJA Funded
- Developed by The Moss Group under cooperative agreement with the Center for Innovative Public Policies, Inc.



Self-Assessment Example

Implementing the Prison Rape Elimination Act: A Toolkit for Jails

2) Staffing, Personnel, and Facility Considerations

Question	Yes	No	Number
1. Does the agency have a stated bed capacity of more than 1000 inmates?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1000.01
A. If the answer to 1) is "Yes," does a full-time PREA Coordinator?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
B. If the answer to 1) is "Yes," does a PREA Coordinator assigned to each facility within the system?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
C. If the answer to 1) is "No," does an agency PREA Coordinator that is within 48- to 96-hour?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
2. Does agency provide a mechanism for the determination of adequate staffing levels and roles necessary (where applicable) to protect inmates against sexual abuse?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
A. If the answer to 2) is "Yes," does the mechanism take into consideration the physical layout of each facility, the composition of the inmate population, and any other relevant factors?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
3. Does each facility conduct an annual assessment to determine whether adjustments are needed to the administrative, staffing, or other relevant factors?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
A. Established staffing levels	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
B. Personnel training systems	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
C. The deployment of roles containing inmates and other relevant factors	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
4. Are decisions to respond to any staffing level in a facility made in a way that takes into account the effect of the design, equipment, equipment, or technology upon the agency's ability to protect inmates from sexual abuse?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01
5. When making or updating a video monitoring system, electronic surveillance system, or other monitoring technology, does the agency consider how such technology may enhance the agency's ability to protect inmates from sexual abuse?	<input type="checkbox"/>	<input type="checkbox"/>	1000.01

60

Toolkit for Jails

Once the self-assessments are complete, facilities can develop action plans to guide implementation efforts.



Action Plan Example

Implementing The Prison Rape Elimination Act: A Toolkit for Jails

7.3 - Self-Assessment Checklist Action Plan

Using the Self-Assessment Checklist Summary, rate each individual standard that needs follow-up on the action plan form. Enter the date, implementation level, staff assigned to follow up, any resources needed, and any other notes.

Checklist Complete Date: _____ Target Review Date: _____

Standard:	Priority Level: <input type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High
	Implementation Level <input type="checkbox"/> Not Currently Implemented <input type="checkbox"/> Partially Implemented <input type="checkbox"/> Fully Implemented
Responsible Parties: Internal:	
External:	
Available Resources:	
Required Resources:	
Notes:	

62

APPENDIX VI

PREA

Pre Audit Questionnaire

PREA AUDIT: PRE-AUDIT QUESTIONNAIRE ADULT PRISONS & JAILS



Original date completed:
Dates revised:
Completed by:
Title:
Date of last agency PREA audit (if applicable):
Date of last facility PREA audit:

AGENCY INFORMATION (IF APPLICABLE)

Name of agency:		
Governing authority or parent agency: <i>(if applicable)</i>		
Physical address:		
Mailing address: <i>(if different from above)</i>		
Telephone number:		
The agency is:	<input type="checkbox"/> Military	<input type="checkbox"/> County <input type="checkbox"/> Federal
	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Municipal <input type="checkbox"/> State
	<input type="checkbox"/> Private not for profit	
Agency mission: <i>(attach additional pages if necessary)</i>		Upload Attachment
Agency Chief Executive Officer		
Name:	Title:	
Email address:	Telephone number:	
Agency-Wide PREA Coordinator		
Name:	Title:	
Email address:	Telephone number:	
PREA coordinator reports to:		
Number of compliance managers who report to PREA coordinator:		
Agency website with PREA information:		
Is the agency accredited by any other organization? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Other		
Number of volunteers and individual contractors currently authorized to enter the facility:		
Number of investigators the agency currently employs for investigating allegations of sexual abuse:		

FACILITY INFORMATION

Name of facility:

Physical address:

Mailing address: *(if different from above)*

Telephone number:

The facility is:	<input type="checkbox"/> Military	<input type="checkbox"/> County	<input type="checkbox"/> Federal
	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Municipal	<input type="checkbox"/> State
	<input type="checkbox"/> Private not for profit		

Facility Type: Jail Prison

Facility mission: *(attach additional pages if necessary)* **UPLOAD ATTACHMENT**

Facility website with PREA information:

Have there been any internal or external audits and/or accreditations for this facility? Yes No **UPLOAD ANY RELEVANT REPORTS**

Warden/Superintendent

Name of Warden/Superintendent: **Title:**

Email address: **Telephone number:**

Facility PREA Compliance Manager

Name of PREA compliance manager: **Title:**

Email address: **Telephone number:**

Facility Health Service Administrator

Name of health service administrator: **Title:**

Email address: **Telephone number:**

Facility Characteristics

Designed facility capacity:	Current population of facility:	UPLOAD DAILY POPULATION REPORT FOR THE 1 ST , 10 TH , AND 20 TH DAY OF THE MONTH FOR THE PAST 12 MONTHS
------------------------------------	--	--

Number of inmates admitted to facility during the past 12 months:

Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:

Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:

Number of inmates on date of audit who were admitted to facility prior to August 20, 2012:

Age range of population: Adults (range) Juveniles (range) Youthful inmates (range)

Are they housed separately from the adult population? Yes No N/A

Number of youthful inmates housed at this facility during the past 12 months:

Average length of stay or time under supervision:

Facility security level/inmate custody levels:

Number of staff assigned to the facility (including current staff and new hires) during the past 12 months:

Number of staff hired at facility during the past 12 months who may have contact with inmates:

Number of staff assigned to the facility (including current staff and new hires) since the last audit:

Number of contracts in past 12 months for services with contractors who might have contact with inmates:

Physical Plant

Number of buildings:	Number of single cell housing units:	
Number of multiple occupancy cells housing units:		
Number of open bay/dorms housing units:		
Number of segregation cells (administrative and disciplinary):		
<i>UPLOAD SCHEMATIC OF FACILITY LAYOUT</i>		
Description of any video or electronic monitoring technology (including any relevant information about where cameras are placed, where the control room is, retention of video, etc.):		
Medical		
Type of medical facility:		
Forensic sexual assault medical exams are conducted at:		

PREVENTION PLANNING

§115.11 – Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

115.11 (a)-1	The agency has a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment in facilities it operates directly or under contract.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.11 (a)-2	The facility has a policy outlining how it will implement the agency's zero-tolerance approach to preventing, detecting, and responding to sexual abuse and sexual harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.11 (a)-3	The policy includes definitions of prohibited behaviors regarding sexual assault and sexual harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (a)-4	The policy includes sanctions for those found to have participated in prohibited behaviors.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (a)-5	The policy includes a description of agency strategies and responses to reduce and prevent sexual abuse and sexual harassment of inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (b)-1	The agency employs or designates an upper-level, agency-wide PREA coordinator.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGENCY ORGANIZATIONAL CHART
115.11 (b)-2	The PREA coordinator has sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (b)-3	The position of the PREA coordinator in the agency's organizational structure:		
115.11 (c)-1	The facility has designated a PREA compliance manager.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (c)-2	The PREA compliance manager has sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.11 (c)-3	The position of the PREA compliance manager in the agency's organizational structure:		
115.11 (c)-4	Person to whom the PREA compliance manager reports:		

§115.12 – Contracting with other entities for the confinement of inmates.

115.12 (a)-1	The agency has entered into or renewed a contract for the confinement of inmates on or after August 20, 2012, or since the last PREA audit, whichever is later.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD CONTRACTS
115.12 (a)-2	All of the above contracts require contractors to adopt and comply with PREA standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.12 (a)-3	The number of contracts for the confinement of inmates that the agency entered into or renewed with private entities or other government agencies on or after August 20, 2012, or since the last PREA audit, whichever is later:		
115.12 (a)-4	The number of above contracts that DID NOT require contractors to adopt and comply with PREA standards:		
115.12 (b)-1	All of the above contracts require the agency to monitor the contractor's compliance with PREA Standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.12 (b)-2	The number of the contracts referenced in 115.12 (a) that DO NOT require the agency to monitor contractor's compliance with PREA standards:		

§115.13 – Supervision and monitoring.

115.13 (a)-1	The agency requires each facility it operates to develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring to protect inmates against abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF STAFFING PLAN DEVELOPMENT PROCESS
			UPLOAD STAFFING PLAN
115.13 (a)-2	Since August 20, 2012, or last PREA audit, whichever is later, the average daily number of inmates:		
115.13 (a)-3	Since August 20, 2012, or last PREA audit, whichever is later, the average daily number of inmates on which the staffing plan was predicated:		
115.13 (b)-1	Each time the staffing plan is not complied with, the facility documents and justifies all deviations from the staffing plan (enter N/A if no deviations from plan).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	UPLOAD DOCUMENTATION OF DEVIATIONS FROM STAFFING PLANS AND WRITTEN JUSTIFICATIONS FOR ALL SUCH DEVIATION
115.13 (b)-2	If documented, the six most common reasons for deviating from the staffing plan in the last 12 months:	1. 2. 3.	4. 5. 6.
115.13 (c)-1	At least once every year the facility, in collaboration with the PREA coordinator, reviews the staffing plan to see whether adjustments are needed in (a) the staffing plan, (b) the deployment of monitoring technology, or (c) the allocation of agency/facility resources to commit to the staffing plan to ensure compliance.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF REVIEWS

115.13 (d)-1	The facility requires that intermediate-level and higher-level staff conduct unannounced rounds to identify and deter staff sexual abuse and sexual harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY OR OTHER DOCUMENTATION OF REQUIREMENT
115.13 (d)-2	If yes, the facility documents each unannounced round.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF UNANNOUNCED ROUNDS
115.13 (d)-3	If yes, over time the unannounced rounds cover all shifts and all areas of the facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION THAT ROUNDS COVER ALL SHIFTS/AREAS
115.13 (d)-4	If yes, the facility prohibits staff from alerting other staff of the conduct of such rounds.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
§115.14 – Youthful inmates.			
115.14 (a)-1	The facility prohibits placing youthful inmates in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON HOUSING YOUTHFUL INMATES
115.14 (a)-2	The facility has housing units to which youthful inmates are assigned that provide sight and sound separation between youthful and adult offenders in dayrooms, common areas, showers, and sleeping quarters.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DAILY POPULATION REPORTS FOR THE LAST 12 MONTHS
115.14 (a)-3	The facility places youthful inmates in the SAME HOUSING UNIT as adults.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.14 (a)-4	Youthful inmates who are placed in the SAME HOUSING UNIT as adults have sight, sound, or physical contact with any adult inmate through use of shower area, sleeping quarters, shared dayroom, or other common space.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.14 (a)-5	In the past 12 months, the number of housing units to which youthful inmates are assigned that provide sight and sound separation between youthful and adult offenders in dayrooms, common areas, showers, and sleeping quarters:		
115.14 (a)-6	In the past 12 months, the number of youthful inmates placed in SAME HOUSING UNIT as adults at this facility:		
115.14 (b)-1	The facility maintains sight, sound, and physical separation between youthful inmates and adult inmates in areas OUTSIDE HOUSING UNITS.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.14 (b)-2	The agency always provides direct staff supervision in areas OUTSIDE HOUSING UNITS where youthful inmates have sight, sound, or physical contact with adult inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.14 (c)-1	The facility documents the exigent circumstances for each instance in which youthful inmates' access to large-muscle exercise, legally required education services, and other programs and work opportunities was denied.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.14 (c)-2	In the past 12 months, the number of youthful inmates who have been placed in isolation in order to separate them from adult inmates:		
§115.15 – Limits to cross-gender viewing and searches.			
115.15 (a)-1	The facility conducts cross-gender strip and visual body cavity searches of inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON SEARCHES
115.15 (a)-2	In the past 12 months, the number of cross-gender strip and visual body cavity searches of inmates:		
115.15 (a)-3	In the past 12, the number of cross-gender strip and visual body cavity searches of inmates that did not involve exigent circumstances and were performed by non-medical staff:		
115.15 (b)-1	The facility does not permit cross-gender pat-down searches of female inmates, absent exigent circumstances (facilities have until August 20, 2015, to comply; or August 20, 2017, if their rated capacity does not exceed 50 inmates).		
115.15 (b)-2	The facility does not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.		
115.15 (b)-3	Number of pat-down searches of female inmates that were conducted by male staff:		
115.15 (b)-4	Number of pat-down searches of female inmates conducted by male staff that did not involve exigent circumstance(s):		
115.15 (c)-1	Facility policy requires that all cross-gender strip searches and cross-gender visual body cavity searches be documented.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.15 (c)-2	Facility policy requires that all cross-gender pat-down searches of female inmates be documented.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

115.15 (d)-1	The facility has implemented policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks (this includes viewing via video camera).	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON CROSS-GENDER VIEWING LOGS OF EXIGENT CIRCUMSTANCES
115.15 (d)-2	Policies and procedures require staff of the opposite gender to announce their presence when entering an inmate housing unit.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.15 (e)-1	The facility has a policy prohibiting staff from searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY
115.15 (e)-2	Such searches (described in 115.15(e)-1) occurred in the past 12 months.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.15 (f)-1	Percent of all security staff who received training on conducting cross-gender pat-down searches and searches of transgender and intersex inmates in a professional and respectful manner, consistent with security needs:		UPLOAD TRAINING CURRICULA UPLOAD TRAINING LOGS
§115.16 – Inmates with disabilities and inmates who are limited English proficient.			
115.16 (a)-1	The agency has established procedures to provide disabled inmates equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY/DOCUMENTATION OF PROCEDURES UPLOAD CONTRACTS WITH INTERPRETERS OR OTHER PROFESSIONALS HIRED TO ENSURE EFFECTIVE COMMUNICATION WITH INMATES WHO ARE LIMITED ENGLISH PROFICIENT UPLOAD WRITTEN MATERIALS USED FOR EFFECTIVE COMMUNICATION ABOUT PREA WITH INMATES WITH DISABILITIES OR LIMITED READING SKILLS UPLOAD DOCUMENTATION OF STAFF TRAINING ON PREA-COMPLIANT PRACTICES FOR INMATES WITH DISABILITIES
115.16 (b)-1	The agency has established procedures to provide inmates with limited English proficiency equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.16 (c)-1	Agency policy prohibits use of inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under §115.64, or the investigation of the inmate's allegations.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY
115.16 (c)-2	If yes, the agency or facility documents the limited circumstances in individual cases where inmate interpreters, readers, or other types of inmate assistants are used.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.16 (c)-3	In the past 12 months, the number of instances where inmate interpreters, readers, or other types of inmate assistants have been used:		
§115.17 – Hiring and promotion decisions.			
115.17 (a)-1	Agency policy prohibits hiring or promoting anyone who may have contact with inmates and prohibits enlisting the services of any contractor who may have contact with inmates who: (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY FOR HIRING AND PROMOTING
115.17 (b)-1	Agency policy requires the consideration of any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.17 (c)-1	Agency policy requires that before it hires any new employees who may have contact with inmates, it (a) conducts criminal background record checks, and (b) consistent with federal, state, and local law, makes its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.17 (c)-2	In the past 12 months, the number of persons hired who may have contact with inmates who have had criminal background record checks:		
115.17 (d)-1	Agency policy requires that a criminal background record check be completed before enlisting the services of any contractor who may have contact with inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.17 (d)-2	In the past 12 months, the number of contracts for services where criminal background record checks were conducted on all staff covered in the contract who might have contact with inmates:		

115.17 (e)-1	Agency policy requires that either criminal background record checks be conducted at least every five years for current employees and contractors who may have contact with inmates or that a system is in place for otherwise capturing such information for current employees.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON BACKGROUND CHECKS OF CURRENT EMPLOYEES/CONTRACTORS
115.17 (g)-1	Agency policy states that material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
§115.18 – Upgrades to facilities and technology.			
115.18 (a)-1	Has the agency/facility acquired any new facilities or made any substantial expansions or modifications of existing facilities since August 20, 2012, or since the last PREA audit, whichever is later?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.18 (b)-1	Has the agency/facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012, or since the last PREA audit, whichever is later?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

RESPONSIVE PLANNING

§115.21 – Evidence protocol and forensic medical examinations.			
115.21 (a)-1	The agency/facility is responsible for conducting administrative or criminal sexual abuse investigations (including inmate-on-inmate sexual abuse or staff sexual misconduct).	<input type="checkbox"/> Yes <input type="checkbox"/> No (skip to 115.21 (c))	
115.21 (a)-2	If another agency has responsibility for conducting either administrative or criminal sexual abuse investigations, name of the agency that has responsibility:		
115.21 (a)-3	When conducting a sexual abuse investigation, the agency investigators follow a uniform evidence protocol.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD UNIFORM EVIDENCE PROTOCOL
115.21 (b)-1	If applicable, the protocol was adapted from or otherwise based on the most recent edition of the DOJ’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	If no, indicate source used to develop the protocol: UPLOAD ALTERNATIVE SOURCE
115.21 (c)-1	The facility offers all victims of sexual abuse access to forensic medical examinations.	<input type="checkbox"/> Yes, onsite <input type="checkbox"/> Yes, at an outside facility <input type="checkbox"/> No (skip to 115.21 (d))	
115.21 (c)-2	Forensic medical examinations are offered without financial cost to the victim.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.21 (c)-3	Examinations are conducted by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs).	<input type="checkbox"/> Yes <input type="checkbox"/> No (skip to 115.21 (c)-5) <input type="checkbox"/> Sometimes, <i>please describe</i> :	
115.21 (c)-4	When SANEs or SAFEs are not available, a qualified medical practitioner performs forensic medical examinations.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.21 (c)-5	The facility documents efforts to provide SANEs or SAFEs.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF EFFORTS TO PROVIDE SANEs/SAFEs UPLOAD DOCUMENTATION THAT FORENSIC MEDICAL EXAMS ARE OFFERED FOR FREE
115.21 (c)-6	Number of forensic medical exams conducted during the past 12 months:		
115.21 (c)-7	Number of exams performed by SANEs/SAFEs during the past 12 months:		
115.21 (c)-8	Number of exams performed by a qualified medical practitioner during the past 12 months:		
115.21 (d)-1	The facility attempts to make available to the victim a victim advocate from a rape crisis center, in person or by other means.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.21 (d)-2	These efforts are documented.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF AGREEMENT(S) WITH RAPE CRISIS CENTER FOR SERVICES OR DOCUMENTATION OF EFFORTS
115.21 (d)-3	If and when a rape crisis center is not available to provide victim advocate services, the facility provides a qualified staff member from a community-based organization or a qualified agency staff member.	<input type="checkbox"/> Yes <input type="checkbox"/> No	DOCUMENTATION OF STAFF MEMBER’S QUALIFICATIONS IF STAFF MEMBER USED
115.21 (e)-1	If requested by the victim, a victim advocate, qualified agency staff member, or qualified community-based organization staff member accompanies and supports the victim through the forensic medical examination process and investigatory interviews and provides emotional support, crisis intervention, information, and referrals.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT DOCUMENTATION
115.21 (f)-1	If the agency is not responsible for investigating allegations of sexual abuse and relies on another agency to conduct these investigations, the agency has requested that the responsible agency follow the requirements of paragraphs §115.21 (a) through (e) of the standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGREEMENTS/MOUS WITH RESPONSIBLE AGENCY
§115.22 – Policies to ensure referrals of allegations for investigations.			
115.22 (a)-1	The agency ensures that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment (including inmate-on-inmate sexual abuse or staff sexual misconduct).	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICIES AND/OR PROCEDURES GOVERNING INVESTIGATIONS OF ALLEGATIONS OF SEXUAL ABUSE Page/Section:
115.22 (a)-2	During the past 12 months, number of allegations of sexual abuse and sexual harassment that were received:		
115.22 (a)-3	During the past 12 months, number of allegations resulting in an administrative investigation:		
115.22 (a)-4	During the past 12 months, number of allegations referred for criminal investigation:		

115.22 (a)-5	Referring to allegations received during the past 12 months, all administrative and/or criminal investigations were completed.	<input type="checkbox"/> Yes <input type="checkbox"/> No, <i>please explain</i>
115.22 (b)-1	The agency has a policy that requires allegations of sexual abuse or sexual harassment be referred for investigation to an agency with the legal authority to conduct criminal investigations, including the agency if it conducts its own investigations, unless the allegation does not involve potentially criminal behavior.	<input type="checkbox"/> Yes <input type="checkbox"/> No UPLOAD INVESTIGATIVE POLICY Page/Section:
115.22 (b)-2	Agency policy regarding the referral of allegations of sexual abuse or sexual harassment for a criminal investigation is published on the agency website or made publicly available via other means.	<input type="checkbox"/> Yes, <i>please describe</i> <input type="checkbox"/> No
115.22 (b)-3	The agency documents all referrals of allegations of sexual abuse or sexual harassment for criminal investigation.	<input type="checkbox"/> Yes <input type="checkbox"/> No
115.22 (d)-1	If the agency is not responsible for conducting administrative or criminal investigations of alleged sexual abuse, and another <i>state</i> entity has that responsibility, this other entity has a policy governing how such investigations are conducted.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A UPLOAD POLICY Page/Section:
115.22 (e)-1	If the agency is not responsible for conducting administrative or criminal investigations of alleged sexual abuse, and another <i>federal DOJ</i> entity has that responsibility, this other entity has a policy governing how such investigations are conducted.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A UPLOAD POLICY Page/Section:

TRAINING AND EDUCATION

§115.31 – Employee training.

115.31 (a)-1	<p>The agency trains all employees who have contact with inmates on the following matters (check all that apply and indicate where in training curriculum this information is covered):</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) Agency’s zero-tolerance policy for sexual abuse and sexual harassment. <input type="checkbox"/> (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures. <input type="checkbox"/> (3) The right of inmates to be free from sexual abuse and sexual harassment. <input type="checkbox"/> (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment. <input type="checkbox"/> (5) The dynamics of sexual abuse and sexual harassment in confinement. <input type="checkbox"/> (6) The common reactions of sexual abuse and sexual harassment victims. <input type="checkbox"/> (7) How to detect and respond to signs of threatened and actual sexual abuse. <input type="checkbox"/> (8) How to avoid inappropriate relationships with inmates. <input type="checkbox"/> (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender-nonconforming inmates. <input type="checkbox"/> (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities. 	UPLOAD TRAINING POLICY AND/OR PROCEDURES Page/Section:
		UPLOAD TRAINING CURRICULUM Page/Section of training curriculum: Page/Section of training curriculum:
115.31 (b)-1	Training is tailored to the gender of the inmates at the facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No
115.31 (b)-2	Employees who are reassigned from facilities housing the opposite gender are given additional training.	<input type="checkbox"/> Yes <input type="checkbox"/> No
115.31 (c)-1	In the past 12 months, the number of employees assigned to the facility who were trained on the PREA requirements enumerated above:	
115.31 (c)-2	For subsequent audits, the number of employees assigned to the facility who were trained or retrained on the PREA requirements since the last audit:	
115.31 (c)-3	Between trainings the agency provides employees with information about current policies regarding sexual abuse and harassment.	<input type="checkbox"/> Yes, please describe <input type="checkbox"/> No
115.31 (c)-4	How often do employees receive refresher training on PREA requirements?	
115.31 (d)-1	The agency documents that employees understand the training they have received through employee signature or electronic verification.	<input type="checkbox"/> Yes <input type="checkbox"/> No

§115.32 – Volunteer and contractor training.

115.32 (a)-1	All volunteers and contractors <i>who have contact with inmates</i> have been trained on their responsibilities under the agency’s policies and procedures regarding sexual abuse/harassment prevention, detection, and response.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD TRAINING CURRICULUM Page/Section:
115.32 (a)-2	In the past 12 months, the number of volunteers and individual contractors who have been trained in agency’s policies and procedures regarding sexual abuse/harassment prevention, detection, and response:		
115.32 (b)-1	The level and type of training provided to volunteers and contractors is based on the services they provide and level of contact they have with inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.32 (b)-2	All volunteers and contractors <i>who have contact with inmates</i> have at least been notified of the agency’s zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.32 (c)-1	The agency maintains documentation confirming that the volunteers/contractors understand the training they have received.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

§115.33 – Inmate education.			
115.33 (a)-1	Inmates receive information at time of intake about the zero-tolerance policy and how to report incidents or suspicions of sexual abuse or harassment.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGENCY ZERO-TOLERANCE POLICY AND PROCEDURES (SEE 115.11a) Page/Section: UPLOAD SAMPLE DOCUMENTATION OF INFORMATION PROVIDED (E.G., HANDBOOK OR INFORMATION SHEET)
115.33 (a)-2	Number of inmates admitted during past 12 months who were given this information at intake:		
115.33 (b)-1	The number of those inmates during the past 12 months (whose length of stay in the facility was for 30 days or more) received comprehensive education on their rights to be free from both sexual abuse/harassment and retaliation for reporting such incidents and on agency policies and procedures for responding to such incidents within 30 days of intake:		
115.33 (c)-1	Number of inmates in the facility on date of audit who were admitted to the facility prior to August 20, 2012, who were so educated (as stated in 115.33 (b)-1) by August 20, 2013:		
115.33 (c)-2	Of those who were <i>not</i> educated during this period, all inmates have been educated subsequently.	<input type="checkbox"/> Yes, by what date? <input type="checkbox"/> No, how many?	
115.33 (c)-3	Agency policy requires that inmates who are transferred from one facility to another be educated regarding their rights to be free from both sexual abuse/harassment and retaliation for reporting such incidents and on agency policies and procedures for responding to such incidents to the extent that the policies and procedures of the new facility differ from those of the previous facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGENCY POLICY Page/Section:
115.33 (d)-1	Inmate PREA education is available in accessible formats for all inmates including those who are (check all that apply):		UPLOAD AGENCY POLICY Page/Section:
	<input type="checkbox"/> Limited English proficient		
	<input type="checkbox"/> Deaf		
	<input type="checkbox"/> Visually impaired		
	<input type="checkbox"/> Otherwise disabled		
	<input type="checkbox"/> Limited in their reading skills		
115.33 (e)-1	The agency maintains documentation of inmate participation in PREA education sessions.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGENCY POLICY Page/Section:
115.33 (f)-1	The agency ensures that key information about the agency's PREA policies is continuously and readily available or visible through posters, inmate handbooks, or other written formats.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
§115.34 – Specialized training: Investigations.			
115.34 (a)-1	If the agency conducts its own investigations of allegations of sexual abuse, the agency policy requires that investigators are trained in conducting sexual abuse investigations in confinement settings.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	UPLOAD TRAINING POLICY Page/Section: UPLOAD TRAINING CURRICULUM
115.34 (c)-1	If the agency conducts its own investigations of allegations of sexual abuse, the agency maintains documentation showing that investigators have completed the required training.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION Page/Section:
115.34 (c)-2	Number of investigators currently employed who have completed the required training:		
115.34 (d)-1	If an external state agency or Department of Justice component conducts investigations of allegations of sexual abuse (including inmate-on-inmate sexual and staff sexual misconduct), all agents and investigators are trained in conducting investigations in confinement settings.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY AND/OR PROCEDURES Page/Section: UPLOAD TRAINING RECORDS
§115.35 – Specialized training: Medical and mental health care.			
115.35 (a)-1	UPLOAD AGENCY POLICY RELATED TO TRAINING OF MEDICAL AND MENTAL HEALTH CARE PRACTITIONERS Page/Section:		
115.35 (a)-2	Number and percent of all medical and mental health care practitioners who work regularly at this facility and received the training required by agency policy:		# %
115.35 (b)-1	Agency medical staff at this facility conduct forensic exams.	<input type="checkbox"/> Yes <input type="checkbox"/> No (<i>skip to 115.41</i>)	
115.35 (c)-1	The agency maintains documentation pertaining to the training referenced above.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION Page/Section:

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

§115.41 – Screening for risk of victimization and abusiveness.			
115.41 (a)-1	The agency has a policy that requires screening (upon admission to a facility or transfer to another facility) for risk of sexual abuse victimization or sexual abusiveness toward other inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SCREENING POLICY Page/Section:
115.41 (b)-1	The policy requires that inmates be screened for risk of sexual victimization or risk of sexually abusing other inmates within 72 hours of their intake.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.41 (b)-2	Number of inmates entering the facility (either through intake or transfer) within the past 12 months (whose length of stay in the facility was for 72 hours or more) who were screened for risk of sexual victimization or risk of sexually abusing other inmates within 72 hours of their entry into the facility:		
115.41 (c)-1	Risk assessment is conducted using an objective screening instrument.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SCREENING INSTRUMENT Page/Section:
115.41 (f)-1	The policy requires that the facility reassess each inmate’s risk of victimization or abusiveness within a set time period, not to exceed 30 days after the inmate’s arrival at the facility, based upon any additional, relevant information received by the facility since the intake screening.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.41 (f)-2	Number of inmates entering the facility (either through intake or transfer) within the past 12 months (whose length of stay in the facility was for 30 days or more) who were reassessed for their risk of sexual victimization or of being sexually abusive within 30 days after their arrival at the facility based upon any additional, relevant information received since intake:		
115.41 (g)-1	The policy requires that the inmate’s risk level be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate’s risk of sexual victimization or abusiveness.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.41 (h)-1	The policy prohibits disciplining inmates for refusing to answer (or for not disclosing complete information related to) the following questions: <ul style="list-style-type: none"> • Whether the inmate has a mental, physical, or developmental disability. • Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming. • Whether the inmate has previously experienced sexual victimization. • The inmate’s own perception of vulnerability. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
§115.42 – Use of screening information.			
115.42 (a)-1	The agency/facility uses information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF USE OF SCREENING INFORMATION FOR THESE PURPOSES UPLOAD DOCUMENTATION OF HOW DECISIONS ARE MADE
115.42 (b)-1	The agency/facility makes individualized determinations about how to ensure the safety of each inmate.	<input type="checkbox"/> Yes <input type="checkbox"/> No, please explain	UPLOAD ANY RELEVANT POLICIES Page/Section:
115.42 (c)-1	The agency/facility makes housing and program assignments for transgender or intersex inmates in a facility on a case-by-case basis.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES Page/Section:
§115.43 – Protective custody.			
115.43 (a)-1	The agency has a policy prohibiting the placing of inmates at high risk for sexual victimization in involuntary segregated housing unless an assessment of all available alternatives has been made and a determination has been made that there is no available alternative means of separation from likely abusers.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.43 (a)-2	Number of inmates at risk of sexual victimization who were held in involuntary segregated housing in the past 12 months for one to 24 hours awaiting completion of assessment:		
115.43 (c)-1	Number of inmates at risk of sexual victimization who were assigned to involuntary segregated housing in the past 12 months for longer than 30 days while awaiting alternative placement:		
115.43 (d)-1	From a review of case files of inmates at risk of sexual victimization who were held in involuntary segregated housing in the past 12 months, number of case files that include BOTH the following: (a) a statement of the basis for facility’s concern for the inmate’s safety, and (b) the reason or reasons why alternative means of separation cannot be arranged:		
115.43 (e)-1	If an involuntary segregated housing assignment is made, the facility affords each such inmate a review every 30 days to determine whether there is a continuing need for separation from the general population.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF 30-DAY REVIEWS

REPORTING

§115.51 – Inmate reporting.

<p>115.51 (a)-1 The agency has established procedures allowing for multiple internal ways for inmates to report privately to agency officials about:</p> <ul style="list-style-type: none"> • Sexual abuse or sexual harassment; • Retaliation by other inmates or staff for reporting sexual abuse and sexual harassment; AND • Staff neglect or violation of responsibilities that may have contributed to such incidents. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES, PROCEDURES, DOCUMENTS (E.G., INMATE HANDBOOKS) Page/Section:
<p>115.51 (b)-1 The agency provides at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES Page/Section: UPLOAD DOCUMENTATION OF AGREEMENT WITH OUTSIDE PUBLIC OR PRIVATE ENTITY RESPONSIBLE FOR TAKING REPORTS
<p>115.51 (b)-2 The agency has a policy requiring inmates detained solely for civil immigration purposes be provided information on how to contact relevant consular officials and relevant officials of the Department of Homeland Security.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES Page/Section:
<p>115.51 (c)-1 The agency has a policy mandating that staff accept reports of sexual assault and sexual harassment made verbally, in writing, anonymously, and from third parties.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICIES Page/Section: UPLOAD OTHER DOCUMENTATION, SUCH AS INMATE HANDBOOKS
<p>115.51 (c)-2 Staff are required to document verbal reports. If yes, please provide the timeframe required to document the reports.</p>	<input type="checkbox"/> Yes, <i>timeframe:</i> <input type="checkbox"/> No, <i>please explain:</i>	
UPLOAD DOCUMENTATION MADE OF VERBAL REPORTS		
<p>115.51 (d)-1 The agency has established procedures for staff to privately report sexual abuse and sexual harassment of inmates.</p>	<input type="checkbox"/> Yes, <i>please describe:</i> <input type="checkbox"/> No, <i>please explain:</i>	
UPLOAD POLICIES OR PROCEDURES		
<p>115.51 (d)-2 Staff are informed of these procedures in the following ways:</p>	UPLOAD ANY RELEVANT DOCUMENTATION, SUCH AS STAFF HANDBOOKS	

§115.52 – Exhaustion of administrative remedies.

<p>115.52 (a)-1 The agency has an administrative procedure for dealing with inmate grievances regarding sexual abuse.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No, (<i>skip to 115.53</i>)	UPLOAD POLICY/PROCEDURE REGARDING INMATE GRIEVANCES OF SEXUAL ABUSE Page/Section:
<p>115.52 (b)-1 Agency policy or procedure allows an inmate to submit a grievance regarding an allegation of sexual abuse at any time regardless of when the incident is alleged to have occurred.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No, <i>time limit to submit a grievance:</i>	
<p>115.52 (b)-2 Agency policy requires an inmate to use an <i>informal</i> grievance process, or otherwise to attempt to resolve with staff, an alleged incident of sexual abuse.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>115.52 (c)-1 Agency policy and procedure allows an inmate to submit a grievance alleging sexual abuse without submitting it to the staff member who is the subject of the complaint.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
<p>115.52 (c)-2 Agency policy and procedure requires that an inmate grievance alleging sexual abuse not be referred to the staff member who is the subject of the complaint.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
<p>115.52 (d)-1 Agency policy and procedure requires that a decision on the merits of any grievance or portion of a grievance alleging sexual abuse be made within 90 days of the filing of the grievance.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
<p>115.52 (d)-2 In the past 12 months, number of grievances that were filed that alleged sexual abuse:</p>		
<p>115.52 (d)-3 Number of grievances alleging sexual abuse that reached final decision within 90 days after being filed:</p>		
<p>115.52 (d)-4 In the past 12 months, number of grievances alleging sexual abuse that involved extensions because final decision was not reached within 90 days:</p>	UPLOAD SUPPORTING LOGS/RECORDS	
<p>115.52 (d)-5 In cases where the agency requested an extension of the 90-day period to respond to a grievance and had reached final decisions by the time of the PREA audit, some grievances took longer than a 70- day extension period to resolve.</p>	<input type="checkbox"/> Yes, # >70 days: <input type="checkbox"/> No	

115.52 (d)-6	The agency always notifies the inmate in writing when the agency files for an extension, including notice of the date by which a decision will be made.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF WRITTEN NOTIFICATIONS OF EXTENSIONS
115.52 (e)-1	Agency policy and procedure permits third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse and to file such requests on behalf of inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.52 (e)-2	Agency policy and procedure requires that if the inmate declines to have third-party assistance in filing a grievance alleging sexual abuse, the agency documents the inmate's decision to decline.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.52 (e)-3	Number of the grievances alleging sexual abuse filed by inmates in the past 12 months in which the inmate declined third-party assistance, containing documentation of the inmate's decision to decline:		
115.52 (f)-1	The agency has a policy and established procedures for filing an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY/PROCEDURE FOR EMERGENCY GRIEVANCES Page/Section:
115.52 (f)-2	Agency policy and procedure for emergency grievances alleging substantial risk of imminent sexual abuse require an initial response within 48 hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.52 (f)-3	Number of emergency grievances alleging substantial risk of imminent sexual abuse that were filed in the past 12 months:		
115.52 (f)-4	Number of those grievances in 115.52 (e) – 3 that had an initial response within 48 hours:		
115.52 (f)-5	Agency policy and procedure for emergency grievances alleging substantial risk of imminent sexual abuse require that a final agency decision be issued within five days.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Page/Section:
115.52 (f)-6	Number of the grievances alleging substantial risk of imminent sexual abuse filed in the past 12 months that reached final decisions within five days:		
115.52 (g)-1	The agency has a written policy that limits its ability to discipline an inmate for filing a grievance alleging sexual abuse to occasions where the agency demonstrates that the inmate filed the grievance in bad faith.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.52 (g)-2	In the past 12 months, number of inmate grievances alleging sexual abuse that resulted in disciplinary action by the agency against the inmate for having filed the grievance in bad faith:		
§115.53 – Inmate access to outside confidential support services.			
115.53 (a)-1	The facility provides inmates with access to outside victim advocates for emotional support services related to sexual abuse by doing the following:	UPLOAD POLICY/PROCEDURE Page/Section:	
		UPLOAD HANDBOOKS OR WRITTEN MATERIALS PREPARED FOR INMATES PERTINENT TO REPORTING SEXUAL ABUSE AND ACCESS TO SUPPORT SERVICES	
	<ul style="list-style-type: none"> Gives inmates mailing addresses and telephone numbers (including toll-free hotline numbers where available) for local, state, or national victim advocacy or rape crisis organizations. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<ul style="list-style-type: none"> Gives inmates mailing addresses and telephone numbers (including toll-free hotline numbers where available) for immigrant services agencies for persons detained solely for civil immigration purposes. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<ul style="list-style-type: none"> Enables reasonable communication between inmates and these organizations in as confidential a manner as possible. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.53 (b)-1	The facility informs inmates, prior to giving them access to outside support services, the extent to which such communications will be monitored.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.53 (b)-2	The facility informs inmates, prior to giving them access to outside support services, of the mandatory reporting rules governing privacy, confidentiality, and/or privilege that apply for disclosures of sexual abuse made to outside victim advocates, including any limits to confidentiality under relevant federal, state, or local law.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.53 (c)-1	The agency or facility maintains memoranda of understanding or other agreements with community service providers that are able to provide inmates with emotional support services related to sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.53 (c)-2	If YES to 115.53 (c) - 1, the agency or facility maintains copies of those agreements.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD AGREEMENTS/MOUS
115.53 (c)-3	If NO to 115.53 (c) - 1, the agency or facility has <i>attempted</i> to enter into MOUs or other agreements with community service providers that are able to provide such services.	<input type="checkbox"/> Yes <i>please explain why these attempts have not been successful:</i> <input type="checkbox"/> No	
115.53 (c)-4	If YES to 115.53 (c) - 3, the agency maintains documentation of the attempts to enter into such agreements.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF ATTEMPTS TO ENTER INTO AGREEMENTS
§115.54 – Third-party reporting.			
115.54 (a)-1	The agency or facility provides a method to receive third-party reports of inmate sexual abuse or sexual harassment.	<input type="checkbox"/> Yes <i>please describe the method:</i> <input type="checkbox"/> No	
115.54 (a)-2	The agency or facility publicly distributes information on how to report inmate sexual abuse or sexual harassment on behalf of inmates.	<input type="checkbox"/> Yes <i>please describe:</i> <input type="checkbox"/> No	UPLOAD PUBLICLY DISTRIBUTED INFORMATION

OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

§115.61 – Staff and agency reporting duties.

115.61 (a)-1	The agency requires all staff to report immediately and according to agency policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.61 (a)-2	The agency requires all staff to report immediately and according to agency policy retaliation against inmates or staff who reported such an incident.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.61 (a)-3	The agency requires all staff to report immediately and according to agency policy any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.61 (b)-1	Apart from reporting to the designated supervisors or officials and designated state or local services agencies, agency policy prohibits staff from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

§115.62 – Agency protection duties.

115.62 (a)-1	When the agency or facility learns that an inmate is subject to a substantial risk of imminent sexual abuse, it takes immediate action to protect the inmate (i.e., it takes some action to assess appropriate protective measures without unreasonable delay).	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.62 (a)-2	In the past 12 months, the number of times the agency or facility has determined that an inmate was subject to substantial risk of imminent sexual abuse:		UPLOAD ANY RELEVANT DOCUMENTATION
115.62 (a)-3	If the agency or facility made such determinations in the past 12 months, the average amount of time that passed before taking action:	average # of hours	
115.62 (a)-4	Longest amount of time before taking action--if not "immediate" (i.e., without unreasonable delay), please explain:	#hours OR #days <i>Please explain if not immediate:</i>	

§115.63 – Reporting to other confinement facilities.

115.63 (a)-1	The agency has a policy requiring that, upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility must notify the head of the facility or appropriate office of the agency/facility where sexual abuse is alleged to have occurred.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.63 (a)-2	During the past 12 months, the number of allegations the facility received that an inmate was abused while confined at another facility:		Please describe your facility's response to these allegations.
115.63 (b)-1	Agency policy requires the facility head to provide such notification as soon as possible, but no later than 72 hours after receiving the allegation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.63 (c)-1	The agency/facility documents that it has provided such notification within 72 hours of receiving the allegation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF NOTIFICATIONS
115.63 (d)-1	Agency/facility policy requires that allegations received from other facilities/agencies are investigated.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Page/Section:
115.63 (d)-2	In the past 12 months, number of allegations of sexual abuse the facility received from other facilities:		

§115.64 – Staff first responder duties.

115.64 (a)-1	<p>The agency has a first responder policy for allegations of sexual abuse. If yes, the policy requires that, upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to (check all that apply):</p> <p><input type="checkbox"/> (1) Separate the alleged victim and abuser.</p> <p><input type="checkbox"/> (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.</p> <p><input type="checkbox"/> (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.</p>	UPLOAD POLICY ON FIRST RESPONDER DUTIES Page/Section:
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<input type="checkbox"/> (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.		
115.64 (a)-2	In the past 12 months, number of allegations that an inmate was sexually abused:	
115.64 (a)-3	Of these allegations, the number of times the first security staff member to respond to the report separated the alleged victim and abuser:	
115.64 (a)-4	In the past 12 months, number of allegations where staff were notified within a time period that still allowed for the collection of physical evidence. :	
115.64 (a)-5	Of these allegations, number of times the first security staff member to respond to the report: <ol style="list-style-type: none"> (1) Preserved and protected any crime scene until appropriate steps could be taken to collect any evidence. (2) Requested that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. (3) Ensured that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. 	
115.64 (b)-1	Agency policy requires that if the first staff responder is not a security staff member, that responder shall be required to (check all that apply): <input type="checkbox"/> (1) Request that the alleged victim not take any actions that could destroy physical evidence. <input type="checkbox"/> (2) Notify security staff.	
115.64 (b)-2	Of the allegations that an inmate was sexually abused made in the past 12 months, number of times a non-security staff member was the first responder:	
115.64 (b)-3	Of those allegations responded to first by a non-security staff member, number of times that staff member (if collected): <ol style="list-style-type: none"> (1) Requested that the alleged victim not take any actions that could destroy physical evidence. (2) Notified security staff. 	
§115.65 – Coordinated response.		
115.65 (a)-1	The facility developed a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership.	<input type="checkbox"/> Yes <input type="checkbox"/> No UPLOAD WRITTEN INSTITUTIONAL PLAN
§115.66 – Preservation of ability to protect inmates from contact with abusers.		
115.66 (a)-1	The agency, facility, or any other governmental entity responsible for collective bargaining on the agency’s behalf has entered into or renewed any collective bargaining agreement or other agreement since August 20, 2012, or since the last PREA audit, whichever is later.	<input type="checkbox"/> Yes <input type="checkbox"/> No UPLOAD ALL AGREEMENTS ENTERED INTO SINCE AUGUST 20, 2012/LAST PREA AUDIT
§115.67 – Agency protection against retaliation.		
115.67 (a)-1	The agency has a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff.	<input type="checkbox"/> Yes <input type="checkbox"/> No UPLOAD POLICY PROTECTING INMATES AGAINST RETALIATION Page/Section:
115.67 (a)-2	The agency designates staff member(s) or charges department(s) with monitoring for possible retaliation.	<input type="checkbox"/> Yes <input type="checkbox"/> No Staff Name(s): Staff Title(s): Department(s):
115.67 (c)-1	Number of times an incident of retaliation occurred in the past 12 months:	
§115.68 – Post-allegation protective custody.		
115.68 (a)-1	UPLOAD DOCUMENTATION OF INSTANCES WHEN SEGREGATED HOUSING WAS USED TO PROTECT AN INMATE WHO IS ALLEGED TO HAVE SUFFERED SEXUAL ABUSE	

INVESTIGATIONS

§115.71 – Criminal and administrative agency investigations.

115.71 (a)-1	UPLOAD POLICY RELATED TO CRIMINAL AND ADMINSTRATIVE AGENCY INVESTIGATIONS Refer to page/section:		
115.71 (h)-1	Substantiated allegations of conduct that appear to be criminal are referred for prosecution.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.71 (h)-2	Number of substantiated allegations of conduct that appear to be criminal that were referred for prosecution since August 20, 2012, or since the last PREA audit, whichever is later:		
115.71 (i)-1	Agency retains all written reports pertaining to administrative or criminal investigation of alleged sexual assault or sexual harassment for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.71 (k)-1	Any state entity or Department of Justice component that conducts administrative or criminal investigations of alleged sexual assault or sexual harassment does so pursuant to the requirements of standard 115.71.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION CONFIRMING THAT A STATE ENTITY OR DOJ COMPONENT IS AWARE OF REQUIREMENTS OF THE STANDARD

§115.72 – Evidentiary standards for administrative investigations.

115.72 (a)-1	The agency imposes a standard of a preponderance of the evidence or a lower standard of proof for determining whether allegations of sexual abuse or sexual harassment are substantiated.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Refer to page/section:
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§115.73 – Reporting to inmates.

115.73 (a)-1	The agency has a policy requiring that any inmate who makes an allegation that he or she suffered sexual abuse in an agency facility is informed, verbally or in writing, as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded following an investigation by the agency.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY Refer to page/section: UPLOAD SAMPLE OF ALLEGED SEXUAL ABUSE INVESTIGATIONS COMPLETED BY AGENCY
115.73 (a)-2	Number of investigations of alleged inmate sexual abuse that were completed by the facility in the past 12 months:		
115.73 (a)-3	Of the alleged sexual abuse investigations that were completed in the past 12 months, number of inmates who were notified, verbally or in writing, of the results of the investigation:		
115.73 (b)-1	If an outside entity conducts such investigations, the agency requests the relevant information from the investigative entity in order to inform the inmate as to the outcome of the investigation.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	UPLOAD SAMPLE OF ALLEGED SEXUAL ABUSE INVESTIGATIONS COMPLETED BY <i>OUTSIDE</i> AGENCY
115.73 (b)-2	Number of investigations of alleged inmate sexual abuse in the agency's facilities that were completed by an outside agency in the past 12 months:		
115.73 (b)-3	Of the outside agency investigations of alleged sexual abuse that were completed in the past 12 months, number of inmates alleging sexual abuse in an agency facility who were notified verbally or in writing of the results of the investigation:		
115.73 (c)-1	There has been a substantiated or unsubstantiated complaint (i.e., not unfounded) of sexual abuse committed by a staff member against an inmate in an agency facility in the past 12 months.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE DOCUMENTATION OF FOUNDED COMPLAINTS
115.73 (c)-2	If yes, in each case the agency subsequently informed the inmate whenever: (a) the staff member was no longer posted within the inmate's unit; (b) the staff member was no longer employed at the facility; (c) the agency learned that the staff member was indicted on a charge related to sexual abuse within the facility; or (d) the agency learned that the staff member was convicted on a charge related to sexual abuse within the facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE DOCUMENTATION OF NOTIFICATIONS
115.73 (d)-1	Following an inmate's allegation that he or she has been sexually abused by another inmate in an agency facility, the agency subsequently informs the alleged victim whenever: the agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or the agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE DOCUMENTATION OF NOTIFICATIONS
115.73 (e)-1	The agency has a policy that all notifications to inmates described under this standard are documented.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON DOCUMENTATION OF NOTIFICATIONS Refer to page/section: UPLOAD SAMPLE DOCUMENTATION OF NOTIFICATIONS
115.73 (e)-2	Number of notifications to inmates that were made pursuant to this standard in the past 12 months:		
115.73 (e)-3	Of those notifications made in the past 12 months, number that were documented:		

DISCIPLINE

§115.76 – Disciplinary sanctions for staff.

115.76 (a)-1	Staff is subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON STAFF DISCIPLINARY SANCTIONS Refer to page/section:
115.76 (b)-1	In the past 12 months, number of staff from the facility that have violated agency sexual abuse or sexual harassment policies:		UPLOAD SAMPLE RECORDS OF TERMINATIONS, RESIGNATIONS, OR OTHER SANCTIONS FOR VIOLATION OF SEXUAL ABUSE OR HARASSMENT POLICY
115.76 (b)-2	In the past 12 months, number of staff from the facility that have been terminated (or resigned prior to termination) for violating agency sexual abuse or sexual harassment policies:		
115.76 (c)-1	Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) are commensurate with the nature and circumstances of the acts committed, the staff member’s disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.76 (c)-2	In the past 12 months, number of staff from the facility that have been disciplined, short of termination, for violation of agency sexual abuse or sexual harassment policies:		
115.76 (d)-1	All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, are reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.76 (d)-2	In the past 12 months, number of staff from the facility that have been reported to law enforcement or licensing boards following their termination (or resignation prior to termination) for violating agency sexual abuse or sexual harassment policies:		

§115.77 – Corrective action for contractors and volunteers.

115.77 (a)-1	Agency policy requires that any contractor or volunteer who engages in sexual abuse be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY REQUIRING NOTIFICATION Refer to page/section:
115.77 (a)-2	Agency policy requires that any contractor or volunteer who engages in sexual abuse be prohibited from contact with inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.77 (a)-3	In the past 12 months, contractors or volunteers have been reported to law enforcement agencies and relevant licensing bodies for engaging in sexual abuse of inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD REPORTS OF SEXUAL ABUSE OF INMATES BY CONTRACTORS OR VOLUNTEERS
115.77 (a)-4	In the past 12 months, the number of contractors/volunteers reported to law enforcement for engaging in sexual abuse of inmates:		
115.77 (b)-1	The facility takes remedial measures and prohibits further contact with inmates in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF REMEDIAL MEASURES THAT HAVE BEEN ENFORCED

§115.78 – Disciplinary sanctions for inmates.

115.78 (a)-1	Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON INMATE DISCIPLINARY SANCTIONS Refer to page/section:
115.78 (a)-2	Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following a criminal finding of guilt for inmate-on-inmate sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.78 (a)-3	In the past 12 months, the number of administrative findings of inmate-on-inmate sexual abuse that have occurred at the facility being audited:		
115.78 (a)-4	In the past 12 months, the number of criminal findings of guilt for inmate-on-inmate sexual abuse that have occurred at the facility being audited:		
115.78 (d)-1	The facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.78 (d)-2	If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility considers whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.78 (e)-1	The agency disciplines inmates for sexual conduct with staff only upon finding that the staff member did not consent to such contact.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE OF RECORDS OF DISCIPLINARY ACTIONS AGAINST INMATES FOR SEXUAL CONDUCT WITH STAFF
115.78 (f)-1	The agency prohibits disciplinary action for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.78 (g)-1	The agency prohibits all sexual activity between inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

115.78 (g)-2	If the agency prohibits all sexual activity between inmates and disciplines inmates for such activity, the agency deems such activity to constitute sexual abuse only if it determines that the activity is coerced.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
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MEDICAL AND MENTAL HEALTH CARE

§115.81 – Medical and mental health screenings; history of sexual abuse.

115.81 (a)/(c)-1	All inmates at this facility who have disclosed any prior sexual victimization during a screening pursuant to §115.41 are offered a follow-up meeting with a medical or mental health practitioner.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON MEDICAL AND MENTAL HEALTH SCREENING Refer to page/section:
115.81 (a)/(c)-2	If yes, the follow-up meeting was offered within 14 days of the intake screening.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.81 (a)/(c)-3	In the past 12 months, the percent of inmates who disclosed prior victimization during screening who were offered a follow-up meeting with a medical or mental health practitioner:		
115.81 (a)/(c)-4	Medical and mental health staff maintain secondary materials (e.g., form, log) documenting compliance with the above required services.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE MEDICAL/MENTAL HEALTH SECONDARY MATERIALS
115.81 (b)-1	If this facility is a prison, all prison inmates who have ever previously perpetrated sexual abuse are offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.81 (d)-1	Information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical and mental health practitioners.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE OF INMATE CONFINEMENT RECORDS/ OTHER RECORDS AVAILABLE TO CUSTODY STAFF OR NON-HEALTH PERSONNEL
115.81 (d)-2	If no, the information shared with other staff is strictly limited to informing security and management decisions, including treatment plans, housing, bed, work, education, and program assignments, or as otherwise required by federal, state, or local law.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.81 (e)-1	UPLOAD ANY CONSENT DOCUMENTATION/LOGS OBTAINED FROM INMATES OVER AGE 18 BY MEDICAL/MENTAL HEALTH PRACTITIONERS BEFORE REPORTING INFORMATION ABOUT PRIOR SEXUAL VICTIMIZATION THAT DID NOT OCCUR IN AN INSTITUTIONAL SETTING		

§115.82 – Access to emergency medical and mental health services.

115.82(a)-1	Medical and mental health staff maintain secondary materials (e.g., form, log) documenting the timeliness of emergency medical treatment and crisis intervention services that were provided; the appropriate response by non-health staff in the event health staff are not present at the time the incident is reported; and the provision of appropriate and timely information and services concerning contraception and sexually transmitted infection prophylaxis.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD SAMPLE MEDICAL/MENTAL HEALTH SECONDARY FORMS/LOGS RE: ACCESS TO SERVICES
115.82(d)-1	Treatment services are provided to every victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD ANY RELEVANT POLICY/GUIDELINES ON MEDICAL/MENTAL HEALTH TREATMENT: SEXUAL ASSAULT

§115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers.

115.83 (a)-1	The facility offers medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON ONGOING MEDICAL/MENTAL HEALTH TREATMENT FOR VICTIMS AND ABUSERS Refer to page/section:
115.83 (d)-1	Female victims of sexual abuse while incarcerated are offered pregnancy tests.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA (all male facility)	
115.83 (e)-1	If pregnancy results from sexual abuse while incarcerated, victims receive timely and comprehensive information about, and timely access to, all lawful pregnancy-related medical services.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA (all male facility)	
115.83 (f)-1	Inmate victims of sexual abuse while incarcerated are offered tests for sexually transmitted infections as medically appropriate.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.83 (h)-1	The facility attempts to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offers treatment when deemed appropriate by mental health practitioners.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

§115.86 – Sexual abuse incident reviews.

115.86 (a)-1	The facility conducts a sexual abuse incident review at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON CONDUCTING SEXUAL ABUSE INCIDENT REVIEWS Refer to page/section: UPLOAD DOCUMENTATION OF INCIDENT REVIEWS
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			UPLOAD SAMPLE DOCUMENTATION OF COMPLETED ADMINISTRATIVE INVESTIGATIONS OF SEXUAL ABUSE
115.86 (a)-2	Excluding only "unfounded " incidents, in the past 12 months the number of administrative investigations of alleged sexual abuse completed at the facility:		
115.86 (b)-1	Sexual abuse incident reviews are ordinarily conducted within 30 days of concluding the investigation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.86 (b)-2	Excluding only "unfounded " incidents, in the past 12 months, the number of administrative investigations of alleged sexual abuse completed at the facility that were followed by a sexual abuse incident review within 30 days:		
115.86 (c)-1	The sexual abuse incident review team includes upper-level management officials and allows for input from line supervisors, investigators, and medical or mental health practitioners.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.86 (d)-1	The facility prepares a report of its findings from sexual abuse incident reviews, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submits such report to the facility head and PREA Compliance Manager.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD REPORTS OF FINDINGS FROM SEXUAL ASSAULT INCIDENT REVIEWS
115.86 (e)-1	The facility implements the recommendations for improvement or documents its reasons for not doing so.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION SUPPORTING IMPLEMENTATION OF RECOMMENDATIONS OR DOCUMENTATION OF REASONS FOR NOT IMPLEMENTING RECOMMENDATIONS
§115.87 – Data collection.			
115.87 (a)/(c)-1	The agency collects accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON SEXUAL ABUSE DATA COLLECTION Refer to page/section: UPLOAD SET OF DEFINITIONS
115.87 (a)/(c)-2	The standardized instrument includes, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence (SSV) conducted by the Department of Justice.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DATA COLLECTION INSTRUMENT
115.87 (b)-1	The agency aggregates the incident-based sexual abuse data at least annually.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.87 (d)-1	The agency maintains, reviews, and collects data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.87 (e)-1	The agency obtains incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
115.87 (e)-2	The data from private facilities complies with SSV reporting re: content.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.87 (f)-1	The agency provided Department of Justice data from the previous calendar year upon request.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
§115.88 – Data review for corrective action.			
115.88 (a)-1	The agency reviews data collected and aggregated pursuant to §115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, response policies, and training, including: <ul style="list-style-type: none"> Identifying problem areas; Taking corrective action on an ongoing basis; and Preparing an annual report of its findings from its data review and any corrective actions for each facility, as well as the agency as a whole. 	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD DOCUMENTATION OF CORRECTIVE ACTION PLANS UPLOAD ANNUAL REPORT OF FINDINGS FROM DATA REVIEWS/CORRECTIVE ACTIONS
115.88 (b)-1	The annual report includes a comparison of the current year's data and corrective actions with those from prior years.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.88 (b)-2	The annual report provides an assessment of the agency's progress in addressing sexual abuse.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.88 (c)-1	The agency makes its annual report readily available to the public at least annually through its website.	<input type="checkbox"/> Yes <input type="checkbox"/> No	LINK TO WEBSITE WHERE ANNUAL REPORT IS AVAILABLE
115.88 (c)-2	If no, the agency makes it available through other means.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.88 (c)-3	The annual reports are approved by the agency head.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.88 (d)-1	When the agency redacts material from an annual report for publication, the redactions are limited to specific materials where publication would present a clear and specific threat to the safety and	<input type="checkbox"/> Yes <input type="checkbox"/> No	

	security of the facility.		
115.88 (d)-2	The agency indicates the nature of material redacted.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
§115.89 – Data storage, publication, and destruction.			
115.89 (a)-1	The agency ensures that the incident-based and aggregate data are securely retained.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON DATA STORAGE Refer to page/section:
115.89 (b)-1	Agency policy requires that aggregated sexual abuse data from facilities under its direct control and private facilities with which it contracts be made readily available to the public at least annually through its website.	<input type="checkbox"/> Yes <input type="checkbox"/> No	UPLOAD POLICY ON DATA AVAILABILITY Refer to page/section:
115.89 (b)-2	If NO, the agency makes it available through other means.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.89 (c)-1	Before making aggregated sexual abuse data publicly available, the agency removes all personal identifiers.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
115.89 (c)-2	The agency maintains sexual abuse data collected pursuant to §115.87 for at least 10 years after the date of initial collection, unless federal, state, or local law requires otherwise.	<input type="checkbox"/> Yes <input type="checkbox"/> No	IF FEDERAL, STATE, OR LOCAL LAW REQUIRES OTHERWISE, UPLOAD A COPY OF THE APPLICABLE LAW

APPENDIX VII

PREA

Executive Summary

The following is the Executive Summary of the rule signed by the Attorney General on May 16, 2012, which has been sent to the Federal Register for publication. The complete rule is available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

DEPARTMENT OF JUSTICE

National Standards to Prevent, Detect, and Respond to Prison Rape

Executive Summary

A. Overview

The goal of this rulemaking is to prevent, detect, and respond to sexual abuse in confinement facilities, pursuant to the Prison Rape Elimination Act of 2003. For too long, incidents of sexual abuse against incarcerated persons have not been taken as seriously as sexual abuse outside prison walls. In popular culture, prison rape is often the subject of jokes; in public discourse, it has been at times dismissed by some as an inevitable—or even deserved—consequence of criminality.

But sexual abuse is never a laughing matter, nor is it punishment for a crime. Rather, it is a crime, and it is no more tolerable when its victims have committed crimes of their own. Prison rape can have severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.

In passing PREA, Congress noted that the nation was “largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.” 42 U.S.C. 15601(12). The legislation established a National Prison Rape Elimination Commission (NPREC) to “carry out a comprehensive legal and factual study of the penalogical [*sic*], physical, mental, medical, social, and economic impacts of prison rape in the United States” and to recommend to the Attorney General “national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.” 42 U.S.C. 15606(d)(1), (e)(1). The statute defines “prison” as “any confinement facility,” including jails, police lockups, and juvenile facilities, and defines “rape” to include a broad range of unwanted sexual activity. 42 U.S.C. 15609(7) & (9). After over four years of work, the NPREC released its recommended national standards in June 2009 and subsequently disbanded, pursuant to the statute.

The statute directs the Attorney General to publish a final rule adopting “national standards for the detection, prevention, reduction, and punishment of prison rape . . . based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission . . . and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.” 42 U.S.C. 15607(a)(1)-(2). However, the standards may not “impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.” 42 U.S.C. 15607(a)(3).

The standards are to be immediately binding on the Federal Bureau of Prisons. 42 U.S.C. 15607(b). A State whose Governor does not certify full compliance with the standards is subject

to the loss of five percent of any Department of Justice grant funds that it would otherwise receive for prison purposes, unless the Governor submits an assurance that such five percent will be used only for the purpose of enabling the State to achieve and certify full compliance with the standards in future years. 42 U.S.C. 15607(c). The final rule specifies that the Governor's certification applies to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

In addition, any correctional accreditation organization that seeks Federal grants must adopt accreditation standards regarding sexual abuse that are consistent with the national standards in this final rule. 42 U.S.C. 15608.

In drafting the final rule, the Department balanced a number of competing considerations. In the current fiscal climate, governments at all levels face budgetary constraints. The Department has aimed to craft standards that will yield the maximum desired effect while minimizing the financial impact on jurisdictions. In addition, recognizing the unique characteristics of individual facilities, agencies, and inmate populations, the Department has endeavored to afford discretion and flexibility to agencies to the extent feasible.

The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.

Notably, the standards are generally not outcome-based, but rather focus on policies and procedures. While performance-based standards generally give regulated parties the flexibility to achieve regulatory objectives in the most cost-effective way, it is difficult to employ such standards effectively to combat sexual abuse in confinement facilities, where significant barriers exist to the reporting and investigating of such incidents. An increase in incidents reported to facility administrators might reflect increased abuse, or it might just reflect inmates' increased willingness to *report* abuse, due to the facility's success at assuring inmates that reporting will yield positive outcomes and not result in retaliation. Likewise, an increase in substantiated incidents could mean either that a facility is failing to protect inmates, or else simply that it has improved its effectiveness at investigating allegations. For these reasons, the standards generally aim to inculcate policies and procedures that will reduce and ameliorate bad outcomes, recognizing that one possible consequence of improved performance is that evidence of more incidents will come to light.

The standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse. Furthermore, while the standards aim to include a variety of best practices, they do not incorporate every promising avenue of combating sexual abuse, due to the need to adopt national standards applicable to a wide range of facilities, while taking costs into consideration. The

standards consist of policies and practices that are attainable by all affected agencies, recognizing that agencies can, and some currently do, exceed the standards in a variety of ways. The Department applauds such efforts, encourages agencies to adopt or continue best practices that exceed the standards, and intends to support further the identification and adoption of innovative methods to protect inmates from harm. As described in the Background section, the Department is continuing its efforts to fund training, technical assistance, and other support for agencies, including through a National Resource Center for the Elimination of Prison Rape.

Because the purposes and operations of various types of confinement facilities differ significantly, there are four distinct sets of standards, each corresponding to a different type of facility: Adult prisons and jails (§§ 115.11–.93); lockups (§§ 115.111–.193); community confinement facilities (§§ 115.211–.293); and juvenile facilities (§§ 115.311–.393). The standards also include unified sections on definitions (§§ 115.5–.6) and on audits and State compliance (§§ 115.401–.405, 115.501).¹

The standards contained in this final rule apply to facilities operated by, or on behalf of, State and local governments and the Department of Justice. However, in contrast to the proposed rule, the final rule concludes that PREA encompasses all Federal confinement facilities. Given their statutory authorities to regulate conditions of detention, other Federal departments with confinement facilities (including but not limited to the Department of Homeland Security) will work with the Attorney General to issue rules or procedures that will satisfy the requirements of PREA. 42 U.S.C. 15607(a)(2).

B. Summary of Major Provisions

This summary of the major provisions of the standards does not include every single aspect of the standards, nor does it capture all distinctions drawn in the standards on the basis of facility type or size. Agencies that are covered by each set of standards should read them in full rather than rely exclusively on this summary.

General Prevention Planning. To ensure that preventing sexual abuse receives appropriate attention, the standards require that each agency and facility designate a PREA point person with sufficient time and authority to coordinate compliance efforts. Facilities may not hire or promote persons who have committed sexual abuse in an institutional setting or who have been adjudicated to have done so in the community, and must perform background checks on prospective and current employees, unless a system is in place to capture such information for current employees. A public agency that contracts for the confinement of its inmates with outside entities must include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

¹The standards themselves refer to persons confined in prisons and jails as “inmates,” persons confined in lockups as “detainees,” and persons confined in juvenile facilities or community confinement facilities as “residents.” For simplicity, however, the discussion and explanation of the standards refer collectively to all such persons as “inmates” except where specifically discussing lockups, juvenile facilities, or community confinement facilities.

Supervision and Monitoring. The standards require each facility to develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. The staffing standard further requires all agencies to annually assess, determine, and document whether adjustments are needed to the staffing levels or deployment of monitoring technologies.

Due to the great variation across facilities in terms of size, physical layout, and composition of the inmate population, it would be impractical to require a specified level of staffing. Likewise, mandating a subjective standard such as “adequate staffing” would be extremely difficult to measure. Instead, the final standard requires that prisons and jails use their best efforts to comply with the staffing plan on a regular basis and document and justify any deviations. Given that staffing increases often depend on budget approval from an external legislative or other governmental entity, this revision is designed to support proper staffing without discouraging agencies from attempting to comply with the PREA standards due to financial concerns.

The “best efforts” language encourages agencies to compose the most appropriate staffing plan for each facility without incentivizing agencies to set the bar artificially low in order to avoid non-compliance. But if the facility’s plan is plainly deficient on its face, the facility is not in compliance with this standard even if it adheres to its plan.

In addition, the standards contained in the final rule require that supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment.

Staffing of Juvenile Facilities. The standards set minimum staffing levels for certain juvenile facilities. As discussed in greater detail in the appropriate section below, the Department seeks additional comment on this aspect of the standards, and may make changes if warranted in light of public comments received. Specifically, the standards require secure juvenile facilities—*i.e.*, those that do not allow residents access to the community—to maintain minimum security staff ratios of 1:8 during resident waking hours, and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances; deviations from the staffing plan in such circumstances must be documented. Because increasing staffing levels takes time and money, this requirement does not go into effect until October 2017 except for facilities that are already obligated by law, regulation, or judicial consent decree to maintain at least 1:8 and 1:16 ratios.

Juveniles in Adult Facilities. The final rule, unlike the proposed rule and the NPREC’s recommended standards, contains a standard that governs the placement of juveniles in adult facilities. The standard applies only to persons under the age of 18 who are under adult court supervision and incarcerated or detained in a prison, jail, or lockup. Such persons are, for the purposes of this standard, referred to as “youthful inmates” (or, in lockups, “youthful detainees”). By contrast, youth in the juvenile justice system are already protected by the Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. 5601 *et seq.*, which provides formula grants to States conditioned on (subject to minimal exceptions) separating juveniles from adults in secure facilities and removing juveniles from adult jails and lockups.

This standard imposes three requirements. First, no inmate under 18 may be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain “sight and sound separation”—*i.e.*, preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together. Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision and, absent exigent circumstances, must afford them daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

While some commenters asserted that, in addition to increasing risk of victimization, confining youth in adult facilities impedes access to age-appropriate programming and services and may actually increase recidivism, the Department is cognizant that its mandate in promulgating these standards extends only to preventing, detecting, and responding to sexual abuse in confinement facilities. In addition, imposing a general prohibition on the placement of youth in adult facilities, or disallowing such placements unless a court finds that the youth has been violent or disruptive in a juvenile facility, would necessarily require a fundamental restructuring of existing State laws that permit or require such placement. Given the current state of knowledge regarding youth in adult facilities, and the availability of more narrowly tailored approaches to protecting youth, the Department has decided not to impose a complete ban at this time through the PREA standards. The Department has supported, however, congressional efforts to amend the JJDPa to extend its jail removal requirements to apply to youth under adult criminal court jurisdiction awaiting trial, unless a court specifically finds that it is in the interest of justice to incarcerate the youth in an adult facility.

Cross-Gender Searches and Viewing. In a change from the proposed standards, the final standards include a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances—which is currently the policy in most State prison systems. However, female inmates’ access to programming and out-of-cell opportunities must not be restricted to comply with this provision.

For juvenile facilities, however, the final standards, like the proposed standards, prohibit cross-gender pat-down searches of both female and male residents. And for all facilities, the standards prohibit cross-gender strip searches and visual body cavity searches except in exigent circumstances or when performed by medical practitioners, in which case the searches must be documented.

The standards also require facilities to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. In addition, facilities must require staff of the opposite gender to announce their presence when entering an inmate housing unit.

Training and Education. Proper training is essential to combating sexual abuse in correctional facilities. The standards require staff training on key topics related to preventing,

detecting, and responding to sexual abuse. Investigators and medical practitioners will receive training tailored to their specific roles.

Inmates, too, must understand a facility's policies and procedures in order to know that they will be kept safe and that the facility will not tolerate their committing sexual abuse. The standards require that facilities explain their zero-tolerance policy regarding sexual abuse and sexual harassment educate inmates on how to report any such incidents.

Screening. The standards require that inmates be screened for risk of being sexually abused or sexually abusive and that screening information be used to inform housing, bed, work, education, and program assignments. The goal is to keep inmates at high risk of victimization away from those at high risk of committing abuse. However, facilities may not simply place victims in segregated housing against their will unless a determination has been made that there is no available alternative means of separation, and even then only under specified conditions and with periodic reassessment.

Reporting. The standards require that agencies provide at least two internal reporting avenues, and at least one way to report abuse to a public or private entity or office that is not part of the agency and that can allow inmates to remain anonymous upon request. An agency must also provide a way for third parties to report such abuse on behalf of an inmate.

In addition, agencies are required to provide inmates with access to outside victim advocates for emotional support services related to sexual abuse, by giving inmates contact information for local, State, or national victim advocacy or rape crisis organizations and by enabling reasonable communication between inmates and these organizations, with as much confidentiality as possible.

Responsive Planning. The standards require facilities to prepare a written plan to coordinate actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. Upon learning of an allegation of abuse, staff must separate the alleged victim and abuser and take steps to preserve evidence.

The standards also require agencies to develop policies to prevent and detect any retaliation against persons who report sexual abuse or who cooperate with investigations. Allegations must be investigated properly, thoroughly, and objectively, and documented correspondingly, and must be deemed substantiated if supported by a preponderance of the evidence. No agency may require an inmate to submit to a polygraph examination as a condition for proceeding with an investigation. Nor may an agency enter into or renew any agreement that limits its ability to remove alleged staff abusers from contact with inmates pending an investigation or disciplinary determination.

Investigations. Investigations are required to follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The agency must offer victims no-cost access to forensic medical examinations where evidentiarily or medically appropriate. In addition, the agency must attempt

to make available a victim advocate from a rape crisis center. If that option is not available, the agency must provide such services through either (1) qualified staff from other community-based organizations or (2) a qualified agency staff member.

Discipline. The standards require that staff be subject to discipline for violating agency policies regarding sexual abuse, with termination the presumptive discipline for actually engaging in sexual abuse. Terminations or resignations linked to violating such policies are to be reported to law enforcement (unless the conduct was clearly not criminal) and to relevant licensing bodies.

Inmates also will be subject to disciplinary action for committing sexual abuse. Where an inmate is found to have engaged in sexual contact with a staff member, the inmate may be disciplined only where the staff member did not consent. Where two inmates have engaged in sexual contact, the agency may (as the final rule clarifies) impose discipline for violating any agency policy against such contact, but may deem such activity to constitute sexual abuse only if it determines that the activity was not consensual. In other words, upon encountering two inmates engaging in sexual activity, the agency cannot simply assume that both have committed sexual abuse.

Medical and Mental Health Care. The standards require that facilities provide timely, unimpeded access to emergency medical treatment and crisis intervention services, whose nature and scope are determined by practitioners according to their professional judgment. Inmate victims of sexual abuse while incarcerated must be offered timely information about, and timely access to, emergency contraception and sexually transmitted infections prophylaxis, where medically appropriate. Where relevant, inmate victims must also receive comprehensive information about, and timely access to, all lawful pregnancy-related medical services. In addition, facilities are required to offer a follow-up meeting if the initial screening at intake indicates that the inmate has experienced or perpetrated sexual abuse.

Grievances. If an agency has a grievance process for inmates who allege sexual abuse, the agency may not impose a time limit on when an inmate may submit a grievance regarding such allegations. To be sure, a grievance system cannot be the only method—and should not be the primary method—for inmates to report abuse. As noted above, agencies must provide multiple internal ways to report abuse, as well as access to an external reporting channel.

This standard exists only because the Prison Litigation Reform Act, 42 U.S.C. 1997e, requires that inmates exhaust any available administrative remedies as a prerequisite to filing suit under Federal law with respect to the conditions of their confinement. The final standard contains a variety of other provisions aimed at ensuring that grievance procedures that cover sexual abuse provide inmates with a full and fair opportunity to preserve their ability to seek judicial review, without imposing undue burdens on agencies or facilities. However, agencies that exempt sexual abuse allegations from their remedial schemes are exempt from this standard, because their inmates may proceed directly to court.

Audits. The final rule resolves an issue left undecided in the proposed rule by including standards that require that agencies ensure that each of their facilities is audited once every three

years. Audits must be conducted by: (1) a member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) a member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) other outside individuals with relevant experience. Thus, the final standards differ from the proposed standards in that audits may not be conducted by an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board.

The Department will develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit. All auditors must be certified by the Department, pursuant to procedures, including training requirements, to be issued subsequently.

Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates. The standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

In addition, in a change from the proposed rule, the final standards do not allow placement of LGBTI inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. As in the proposed standards, such placement is not allowed at all in juvenile facilities.

The standards impose a complete ban on searching or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. Agencies must train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender and intersex inmates.

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding his or her own safety. In addition, transgender and intersex inmates must be given the opportunity to shower separately from other inmates.

Inmates with Disabilities and Limited English Proficient (LEP) Inmates. The standards require agencies to develop methods to ensure effective communication with inmates who are deaf or hard of hearing, those who are blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities. Agencies also must take reasonable steps to ensure

meaningful access to all aspects of the agency’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are LEP. Agencies may not rely on inmate interpreters or readers except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate’s safety, the performance of first-response duties, or an investigation.

C. Costs and Benefits

The anticipated costs of full nationwide compliance with the final rule, as well as the benefits of reducing the prevalence of prison rape, are discussed at length in the Regulatory Impact Assessment (RIA), which is available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf and is summarized below in section IV, entitled “Executive Orders 13563 and 12866 - Regulatory Planning and Review.” As shown in Table 1, the Department estimates that the costs of these standards to all covered facilities, assuming full nationwide compliance, would be approximately \$6.9 billion over the period 2012-2026, or \$468.5 million per year when annualized at a 7 percent discount rate. The average annualized cost per facility of compliance with the standards is approximately \$55,000 for prisons, \$50,000 for jails, \$24,000 for community confinement facilities, and \$54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at \$16,000.

Table 1: Estimated Cost of Full State and Local Compliance with the PREA Standards, in the Aggregate, by Year and by Facility Type, in Millions of Dollars

Year	Prisons	Jails	Lockups	CCF	Juveniles	Total All Facilities
2012	\$87.2	\$254.6	\$180.1	\$27.8	\$196.0	\$745.8
2013	\$55.2	\$161.0	\$122.0	\$16.8	\$93.3	\$448.5
2014	\$58.3	\$157.9	\$106.6	\$14.2	\$92.1	\$429.2
2015	\$59.2	\$154.6	\$93.7	\$12.1	\$94.9	\$414.5
2016	\$61.3	\$153.5	\$87.3	\$11.1	\$109.3	\$422.6
2017	\$61.5	\$152.4	\$83.6	\$10.6	\$151.9	\$460.1
2018	\$62.9	\$151.3	\$80.1	\$10.1	\$147.3	\$451.8
2019	\$63.1	\$150.7	\$77.5	\$9.8	\$144.7	\$445.8
2020	\$64.3	\$150.1	\$75.0	\$9.4	\$142.2	\$441.0
2021	\$65.7	\$149.9	\$73.2	\$9.2	\$140.4	\$438.3
2022	\$65.9	\$150.1	\$72.0	\$9.0	\$139.2	\$436.2
2023	\$67.1	\$150.1	\$70.8	\$8.9	\$138.0	\$434.9
2024	\$67.1	\$149.9	\$69.6	\$8.7	\$136.7	\$432.0
2025	\$67.9	\$149.5	\$68.4	\$8.5	\$135.5	\$429.8
2026	\$67.6	\$148.8	\$67.2	\$8.4	\$134.3	\$426.3
15-yr Total	\$974.2	\$2,384.6	\$1,327.3	\$174.8	\$1,995.8	\$6,856.7
Present Value	\$591.2	\$1,488.4	\$869.8	\$116.6	\$1,201.4	\$4,267.4
Annual	\$64.9	\$163.4	\$95.5	\$12.8	\$131.9	\$468.5

However, these figures are potentially misleading. PREA does not require State and local facilities to comply with the Department's standards, nor does it enact a mechanism for the Department to direct or enforce such compliance; instead, the statute provides certain incentives for such confinement facilities to implement the standards. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total actual outlays by those facilities will, in the aggregate, be less than the full nationwide compliance costs calculated in the RIA. Actual outlays incurred will depend on the specific choices that State and local correctional agencies make with regard to adoption of the standards, and correspondingly on the annual expenditures that those agencies are willing and able to make in choosing to implement the standards in their facilities. The Department has not endeavored in the RIA to project those actual outlays.

With respect to benefits, the RIA conducts what is known as a "break-even analysis," by first estimating the monetary value of preventing various types of prison sexual abuse (from incidents involving violence to inappropriate touching) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of full nationwide compliance.

This analysis begins by estimating the current levels of sexual abuse in covered facilities. The RIA concludes that in 2008 more than 209,400 persons were victims of sexual abuse in prisons, jails, and juvenile facilities, of which at least 78,500 prison and jail inmates and 4,300 youth in juvenile facilities were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

Next, the RIA estimates how much monetary benefit (to the victim and to society) accrues from reducing the annual number of victims of prison rape. This is, of course, an imperfect endeavor, given the inherent difficulty in assigning a dollar figure to the cost of such an event. Executive Order 13563 states that agencies "may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts." Each of these values is relevant here, including human dignity, which is offended by acts of sexual violence. While recognizing the limits of monetary measures and the difficulty of translation into dollar equivalents, the RIA extrapolates from the existing economic and criminological literature regarding rape in the community. On the basis of such extrapolations, it finds that the monetizable benefit to an adult of avoiding the highest category of prison sexual misconduct (nonconsensual sexual acts involving injury or force, or no injury or force but high incidence) is worth \$310,000 to \$480,000 per victim; for juveniles, who typically experience significantly greater injury from sexual abuse than do adults, the corresponding category is assessed as worth \$675,000 per victim. Lesser forms of sexual abuse have correspondingly lower avoidance benefit values. The RIA thus determines that the maximum monetizable cost to society of prison rape and sexual abuse (and correspondingly, the total maximum benefit of eliminating it) is about \$46.6 billion annually for prisons and jails, and an additional \$5.2 billion annually for juvenile facilities.

The RIA concludes that the break-even point would be reached if the standards reduced the annual number of victims of prison rape by 1,671 from the baseline levels, which is less than 1 percent of the total number of victims in prisons, jails, and juvenile facilities. The Department

believes it reasonable to expect that the standards, if fully adopted and complied with, would achieve at least this level of reduction in the prevalence of sexual abuse, and thus the benefits of the rule justify the costs of full nationwide compliance.

As noted, this analysis inevitably excludes benefits that are not monetizable, but still must be included in a cost-benefit analysis. These include the values of equity, human dignity, and fairness. Such non-quantifiable benefits will be received by victims who receive proper treatment after an assault; such treatment will in turn enhance their ability to re-integrate into the community and maintain stable employment upon their release from prison. Furthermore, making prisons safer will increase the general well-being and morale of staff and inmates alike. Finally, non-quantifiable benefits will accrue to society at large, by ensuring that inmates re-entering the community are less traumatized and better equipped to support their community. Thus, the true break-even level would likely be lower and perhaps significantly lower than 1,671, if it were possible to account for these non-quantifiable benefits.

APPENDIX VIII

PREA

Jail Standards

PRISON RAPE ELIMINATION ACT



PRISONS AND JAIL STANDARDS

United States Department of Justice Final Rule

**National Standards to Prevent,
Detect, and Respond to Prison Rape
Under the Prison Rape Elimination Act (PREA)**

**28 C.F.R. Part 115
Docket No. OAG-131
RIN 1105-AB34
May 17, 2012**

PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS – PRISONS & JAILS

Sec.

115.5 General definitions.

115.6 Definitions related to sexual abuse.

Standards for Adult Prisons and Jails

Prevention Planning

115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

115.12 Contracting with other entities for the confinement of inmates.

115.13 Supervision and monitoring.

115.14 Youthful inmates.

115.15 Limits to cross-gender viewing and searches.

115.16 Inmates with disabilities and inmates who are limited English proficient.

115.17 Hiring and promotion decisions.

115.18 Upgrades to facilities and technologies.

Responsive Planning

115.21 Evidence protocol and forensic medical examinations.

115.22 Policies to ensure referrals of allegations for investigations.

Training and Education

115.31 Employee training.

115.32 Volunteer and contractor training.

115.33 Inmate education.

115.34 Specialized training: Investigations.

115.35 Specialized training: Medical and mental health care.

Screening for Risk of Sexual Victimization and Abusiveness

115.41 Screening for risk of victimization and abusiveness.

115.42 Use of screening information.

115.43 Protective custody.

Reporting

115.51 Inmate reporting.

115.52 Exhaustion of administrative remedies.

115.53 Inmate access to outside confidential support services.

115.54 Third-party reporting.

Official Response Following an Inmate Report

115.61 Staff and agency reporting duties.

115.62 Agency protection duties.

115.63 Reporting to other confinement facilities.

115.64 Staff first responder duties.

115.65 Coordinated response.

115.66 Preservation of ability to protect inmates from contact with abusers.

115.67 Agency protection against retaliation.

115.68 Post-allegation protective custody.

Investigations

115.71 Criminal and administrative agency investigations.

115.72 Evidentiary standard for administrative investigations.

115.73 Reporting to inmates.

Discipline

115.76 Disciplinary sanctions for staff.

115.77 Corrective action for contractors and volunteers.

115.78 Disciplinary sanctions for inmates.

Medical and Mental Care

115.81 Medical and mental health screenings; history of sexual abuse.

115.82 Access to emergency medical and mental health services.

115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

Data Collection and Review

115.86 Sexual abuse incident reviews.

115.87 Data collection.

115.88 Data review for corrective action.

115.89 Data storage, publication, and destruction.

Audits

115.93 Audits of standards.

Auditing and Corrective Action

115.401 Frequency and scope of audits.

115.402 Auditor qualifications.

115.403 Audit contents and findings.

115.404 Audit corrective action plan.

115.405 Audit appeals.

State Compliance

115.501 State determination and certification of full compliance.

Standards for Prisons and Jails

§ 115.5 General definitions.

For purposes of this part, the term—

Agency means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

Agency head means the principal official of an agency.

Community confinement facility means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Contractor means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Detainee means any person detained in a lockup, regardless of adjudication status.

Direct staff supervision means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

Employee means a person who works directly for the agency or facility.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Facility means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

Facility head means the principal official of a facility.

Full compliance means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Inmate means any person incarcerated or detained in a prison or jail.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Jail means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.

Juvenile means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

Juvenile facility means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.

Law enforcement staff means employees responsible for the supervision and control of detainees in lockups.

Lockup means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

- (1) Under the control of a law enforcement, court, or custodial officer; and
- (2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-down search means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

Prison means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

Resident means any person confined or detained in a juvenile facility or in a community confinement facility.

Secure juvenile facility means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.

Security staff means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

Staff means employees.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Transgender means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

Youthful detainee means any person under the age of 18 who is under adult court supervision and detained in a lockup.

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

Sexual abuse includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Standards for Adult Prisons and Jails

Prevention Planning

§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

§ 115.12 Contracting with other entities for the confinement of inmates.

(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

§ 115.13 Supervision and monitoring.

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

(1) Generally accepted detention and correctional practices;

(2) Any judicial findings of inadequacy;

(3) Any findings of inadequacy from Federal investigative agencies;

(4) Any findings of inadequacy from internal or external oversight bodies;

(5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);

- (6) The composition of the inmate population;
 - (7) The number and placement of supervisory staff;
 - (8) Institution programs occurring on a particular shift;
 - (9) Any applicable State or local laws, regulations, or standards;
 - (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 - (11) Any other relevant factors.
- (b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.
- (c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:
- (1) The staffing plan established pursuant to paragraph (a) of this section;
 - (2) The facility's deployment of video monitoring systems and other monitoring technologies; and
 - (3) The resources the facility has available to commit to ensure adherence to the staffing plan.
- (d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

§ 115.14 Youthful inmates.

- (a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (b) In areas outside of housing units, agencies shall either:
- (1) maintain sight and sound separation between youthful inmates and adult inmates, or
 - (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

§ 115.15 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of [August 20, 2015](#), or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.16 Inmates with disabilities and inmates who are limited English proficient.

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective

communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

§ 115.17 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

(c) Before hiring new employees who may have contact with inmates, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

§ 115.18 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

Responsive Planning

§ 115.21 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol

for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011.

(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

§ 115.22 Policies to ensure referrals of allegations for investigations.

- (a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
- (c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.
- (d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.
- (e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

Training and Education

§ 115.31 Employee training.

- (a) The agency shall train all employees who may have contact with inmates on:
 - (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
 - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - (3) Inmates' right to be free from sexual abuse and sexual harassment;
 - (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - (5) The dynamics of sexual abuse and sexual harassment in confinement;
 - (6) The common reactions of sexual abuse and sexual harassment victims;
 - (7) How to detect and respond to signs of threatened and actual sexual abuse;
 - (8) How to avoid inappropriate relationships with inmates;

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.32 Volunteer and contractor training.

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.33 Inmate education.

(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

§ 115.34 Specialized training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.35 Specialized training: Medical and mental health care.

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and

(4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.41 Screening for risk of victimization and abusiveness.

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

(1) Whether the inmate has a mental, physical, or developmental disability;

(2) The age of the inmate;

(3) The physical build of the inmate;

(4) Whether the inmate has previously been incarcerated;

(5) Whether the inmate's criminal history is exclusively nonviolent;

(6) Whether the inmate has prior convictions for sex offenses against an adult or child;

(7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the inmate has previously experienced sexual victimization;

(9) The inmate's own perception of vulnerability; and

(10) Whether the inmate is detained solely for civil immigration purposes.

- (e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.
- (f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
- (g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.
- (h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.
- (i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

§ 115.42 Use of screening information.

- (a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- (b) The agency shall make individualized determinations about how to ensure the safety of each inmate.
- (c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- (e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

§ 115.43 Protective custody.

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

(1) The opportunities that have been limited;

(2) The duration of the limitation; and

(3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

(1) The basis for the facility's concern for the inmate's safety; and

(2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

Reporting

§ 115.51 Inmate reporting.

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

§ 115.52 Exhaustion of administrative remedies.

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.

(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

§ 115.53 Inmate access to outside confidential support services.

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

§ 115.54 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

Official Response Following an Inmate Report

§ 115.61 Staff and agency reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

§ 115.62 Agency protection duties.

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

§ 115.63 Reporting to other confinement facilities.

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.64 Staff first responder duties.

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

§ 115.65 Coordinated response.

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

§ 115.66 Preservation of ability to protect inmates from contact with abusers.

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.67 Agency protection against retaliation.

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

§ 115.68 Post-allegation protective custody.

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

Investigations

§ 115.71 Criminal and administrative agency investigations.

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.72 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.73 Reporting to inmates.

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer posted within the inmate's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

(1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

Discipline

§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.78 Disciplinary sanctions for inmates.

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.81 Medical and mental health screenings; history of sexual abuse.

(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

§ 115.82 Access to emergency medical and mental health services.

(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.

(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.86 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.87 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.88 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

§ 115.89 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.93 Audits of standards.

The agency shall conduct audits pursuant to §§ 115.401–.405.

Auditing and Corrective Action

§ 115.401 Frequency and scope of audits.

(a) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).

(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

(l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

§ 115.402 Auditor qualifications.

(a) An audit shall be conducted by:

(1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);

(2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or

(3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

§ 115.403 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

§ 115.404 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

§ 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

State Compliance

§ 115.501 State determination and certification of full compliance.

(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

(b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

APPENDIX IX

Garrity Warning

GARRITY WARNING PUBLIC EMPLOYEES ONLY

A warning given to an employee by an employer during an employment investigation that requires the employee to either provide information or be discharged for refusing to provide information. If such a warning is given, the employee may object to the use of such information in a subsequent criminal proceeding on the basis that a self-incriminating statement was made under duress.

SAMPLE GARRITY WARNING

I wish to advise you are being questioned as part of an official investigation of your employer. You will be asked questions specifically, directly and narrowly related to performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the law and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you could be subject to discharge. If you do answer, neither your statement, nor any information or evidence which is gained by reason of such statement, can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent discipline.

BY _____
(For the Employer)

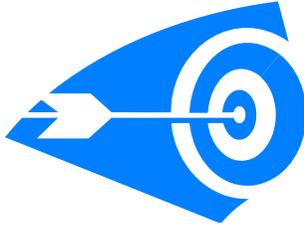
DATED: _____

(Employee)

APPENDIX X

Mentoring and Technical Assistance

Mentoring: Selecting the Right Pathway for Jail Inspections



Your Vision v. Their Vision



Food for Thought

- What is your “job description” as an inspector?
- Do you do “things right” or “do the right thing?”
- Are you perceived as “gotcha police” or as an tech advisor and liaison?
- What is your role with the Sheriffs or their professional associations, jails and the DOC?

How You View Yourself



Inspector/Inspection

- An on-site visit to a jail by an inspector serving as an agent on the Commissioner, Commission or Association.
- Is this how you view your responsibilities, mission, philosophy and goal?

How They View you...Touché!



Where it should be...



Are you Viewed as Technically and Tactically Knowledgeable?



Training

- Do you just review training records to ensure compliance?
- Do you assist in any training?
- Do you attend training with jail personnel?
- Are you considered a portal for training?

When all else fails at the local level....



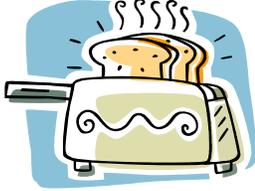
Are You Considered an Expert in Your Field?



Add To Your Resume'

- PONI
- Staffing Analysis
- Prison and Jail Crisis Intervention
- Any and all Legal Updates
- Attendance at Sheriff Association meetings
- Attendance at Training for Custody Personnel

Be a Coach, Trainer....
BE A MENTOR..or be...



APPENDIX XI

OJJDP Compliance New York State

JJDPA COMPLIANCE

NEW YORK STATE

1

- ### Establishing the Monitoring Universe
- ▶ Lockups vs. non-lockup
 - ▶ Exhaustive list of agencies (potential lockups)
 - ▶ Clear understanding of lockup definition
 - ▶ Procedures for determining lockup status
 - ▶ Survey letters

4

- ### New York State Laws
- ▶ Age of responsibility 16
 - Adult criminal court
 - Detained in adult jails / housed separately
 - ▶ Juveniles Delinquents defined 15 & under...
 - For certain felonies may be charged as adults
 - "Juvenile Offender"
 - JJDPA does not apply to juveniles charged as adults

2

- ### Monitoring Universe
- ▶ Not static
 - ▶ Subject to continual review and revision
 - ▶ Centralize administration
 - ▶ All inclusive
 - ▶ Subject to JJDPA monitoring or not

5

- ### Compliance Structure
- ▶ Division of Criminal Justice Services
 - ▶ Commission of Correction
 - Regulatory
 - Full Authority
 - Already conduct compliance audits of lockups based on state standards

3

- ### Monitoring Universe
- ▶ 76 Jails and Penitentiaries
 - ▶ 390 Police Departments with lockups
 - ▶ 778 Police Departments without lockups
 - ▶ 69 Family Courts
 - ▶ 60 State Correctional Facilities (Prisons)
 - ▶ 16 Secure "Juvenile" Correctional Facilities
 - ▶ 11 Secure Juvenile Detention Facilities
 - ▶ 6 Staff Secure Juvenile CF
 - ▶ 39 Staff Secure Juvenile Detention Facilities

6

Monitoring Universe Totals

- ▶ 1445 total facilities

7

Organization of monitoring effort

- ▶ Conduct monitoring site visits every three years
- ▶ One-third of active monitoring universe every year
- ▶ Currently divided among three staff
- ▶ Three to four a day

10

Monitoring Universe

- ▶ 390 Police Departments with lockups
- ▶ 69 Family Courts
- ▶ 16 Secure "Juvenile" Correctional Facilities
- ▶ 11 Secure Juvenile Detention Facilities
- ▶ 6 Staff Secure Juvenile Correctional Facilities
- ▶ 39 Staff Secure Juvenile Detention Facilities
- ▶ 531 total active monitoring sites

8

Findings: Violations

- ▶ Circumstances of violations
- ▶ Juvenile lied about their age
- ▶ Officer didn't verify age
- ▶ Sight and sound not maintained
- ▶ Scared straight programs

11

ID	Facility Name	ORI NUMBER	2	3	4	5
2183	Albany County Family Court	N10010210	Public	Non-Residential	Juvenile Only	Secure
2184	Albany County Family Court	N10020210	Public	Non-Residential	Juvenile or Adult	Secure
2150	Barnes County Family Court	N10620210	Public	Non-Residential	Juvenile Only	Secure
2185	Boone County Family Court	N10030210	Public	Non-Residential	Juvenile or Adult	Secure
2186	Cattaraugus County Family Court	N10040210	Public	Non-Residential	Juvenile or Adult	Secure
2188	Cayuga County Family Court - Courthouse Location	N10050210	Public	Non-Residential	Juvenile or Adult	Secure
2187	Cayuga County Family Court Post Office Building	N10060210	Public	Non-Residential	Juvenile or Adult	Secure
2189	Chautauque County Family Court	N10000210	Public	Non-Residential	Juvenile or Adult	Secure
2190	Chemung County Family Court	N10070210	Public	Non-Residential	Juvenile or Adult	Secure
2191	Chester County Family Court	N10080210	Public	Non-Residential	Juvenile or Adult	Secure
2192	Clemson County Family Court	N10090210	Public	Non-Residential	Juvenile or Adult	Secure
2193	Columbia County Family Court	N10100210	Public	Non-Residential	Juvenile or Adult	Secure
2194	Cortland County Family Court	N10110210	Public	Non-Residential	Juvenile or Adult	Secure
2195	Delaware County Family Court	N10120210	Public	Non-Residential	Juvenile or Adult	Secure
2196	Dutchess County Family Court	N10130210	Public	Non-Residential	Juvenile or Adult	Secure
2197	Errie County Family Court	N10140210	Public	Non-Residential	Juvenile or Adult	Secure
2198	Essex County Family Court	N10150210	Public	Non-Residential	Juvenile or Adult	Secure
2199	Franklin County Family Court	N10160210	Public	Non-Residential	Juvenile or Adult	Secure

9

JJDPAs Updates

- ▶ Reauthorization status
- ▶ Recent congressional actions
- ▶ House sub-committee mark up
- ▶ Senate sub-committee mark up
- ▶ Threats to JJDPAs Title II Funding / Title V

12

JJDPA Title II State Formula Grants Program.

Federal funding to states for the prevention of delinquency and assist in complying with federally-mandated core requirements

Keep status offenders/non-delinquent juveniles out of locked custody and address the disproportionate representation of youth of color in the justice system.

Title II of JJDPA supports state compliance with these core protections and helps states to build prevention and intervention systems.

13

Final Rule Rationalization

- ▶ DOJ continues to support congressional efforts to amend JJDPA so that it applies to juveniles under adult court from being housed in adult facilities.
- ▶ Attain the prohibition under JJDPA instead of PREA

16

PREA AND JJDPA Juveniles in Adult Jails

- ▶ NPREC's Recommendations
 - Youthful Detainees in adult facilities
- ▶ Comments Received
 - Opposition to placing juveniles in adult facilities
- ▶ Final Rule
 - DOJ decided against all out prohibition

14

Final Rule Rationalization

- ▶ DOJ's PREA mandate extends only to preventing, detecting and responding to sexual abuse in facilities
- ▶ Imposing total prohibition would require restructuring of existing state law
- ▶ DOJ decided not to impose prohibition
- ▶ "This time"

15

APPENDIX XII

OJJDP Compliance Forms



JJDPA EVALUATION

ADULT JAILS

Questionnaire

GENERAL INFORMATION

Facility Name: _____

Site Visit Date : _____

Facility Staff: _____ Title: _____

Monitor's Name: _____ Title: _____

Last Eval Date: _____

I. GENERAL PROCESSING OF ALL JUVENILES

(Circle appropriate answers)

New York State law generally provides that no juvenile (person under 16 years of age) may be detained in any adult jail. (An exception is provided wherein juvenile delinquents and juvenile offenders may be temporarily held in an adult jail with the prior approval of OCFS.) Certain juveniles may be committed to the custody of a sheriff in accordance with Criminal Procedure Law; however, those individuals must be brought to a juvenile detention facility and **not to the jail.**

a. What protocols are in place to ensure individuals admitted to the jail are 16 years of age?

b. Does your jail have policies regarding the housing of juveniles in emergency situations (including those with the approval of OCFS)?

Yes / No

c. Does your jail have a policy that describes steps to be taken if jail staff obtains information that an individual incarcerated is not 16 years of age?

Yes / No

d. Does your jail have policies and procedures when a juvenile is committed to the custody of the Sheriff?

Yes / No



JJDPA EVALUATION

ADULT LOCK-UPS

Questionnaire

GENERAL INFORMATION

Facility Name: _____

Site Visit Date : _____

Facility Staff: _____ Title: _____

Monitor's Name: _____ Title: _____

Last Eval Date: _____

I. GENERAL PROCESSING OF ALL JUVENILES

(Circle appropriate answers)

New York State law generally provides that no juvenile (person under 16 years of age) may be detained in any lock-up. (An exception is provided wherein juvenile delinquents and juvenile offenders may be temporarily held in an adult lock-up with the prior approval of OCFS.) As set forth in Articles 3 and 7 of the Family Court Act, the only place in a police department a juvenile may be brought is a questioning room that is designated for juveniles. **The room must be designated as such** by the New York State Office of Court Administration.

a. Does your agency have an Office of Court Administration/Family Court approved room for the questioning of juveniles? (22 NYCRR §205.20) Yes / No

If YES, where is such approved room(s) located?

 (Confirm with OCA approved list)

If NO, how/where do you detain and interview juveniles?

b. Questioning Room Requirements Checklist (requirements of 22 NYCRR §205.20)

- Is the room separate from areas accessible to the general public and adult detainees? Yes / No
- Does the room present an office-like, rather than a jail like, setting? (If room contains cell, bullring, etc., answer "No" and describe below) Yes / No

NEW YORK STATE COMMISSION OF CORRECTION

- Is the room clean and well maintained? Yes / No
- Is the room well-lit and heated? Yes / No
- Are there separate toilet facilities for children or, in the alternative, procedures insuring the privacy and safety of the children when in use? Yes / No
- Is there a separate entrance for children or, in the alternative, procedures which minimize public exposure and avoid mingling with adult detainees? Yes / No
- Is a person in attendance with the child whenever the room is in use as a questioning facility, such person being a policewoman or other qualified female person when the child is a female? Yes / No

If "No" to any of the above, please describe in detail:

c. Other than an OCA-approved questioning room, are juveniles brought to any other room or area of the department? Yes / No

If YES, what rooms or areas of the department?

If YES, for what purpose(s)? (booking, waiting for transport, etc.)

II. DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

In accordance with Section 223 (a) (12) (A) of the JJDP Act, no **status offender** (ungovernable, truant or runaway, i.e. PINS) or non-offender (abused/neglected child) shall be held in secure custody while in an adult lock-ups. A juvenile is considered to be in secure custody when he/she is physically secured to a cuffing rail or other stationary object or physically detained in a locked room, set of rooms or cell. This would include PINS/runaways that are 16 or 17 years of age.

a. **In the last 36 months, has there been a situation where an officer has handcuffed a status offender to a stationary object?**

Yes / No

If yes, what were the details? (Who, what, where, when.)

NEW YORK STATE COMMISSION OF CORRECTION

- b. In the last 36 months, has an officer used a cell, locked room or set of rooms to hold and/or question a status offender?

Yes / No

If yes, what were the details? (Who, what, where, when.)

If either II a or b were answered as yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

Are such situations (a or b) recorded or documented?

Yes / No

If yes, how? If not, why not?

III. SIGHT AND SOUND SEPARATION

In accordance with Section 223 (a) (13) of the JJDP Act, no juveniles shall be held in secure custody in an adult lock-up where they have sight or sound contact with incarcerated or arrested adults.

- a. If the facility has an OCA approved juvenile questioning room, does such room provide **sight and sound separation** from incarcerated and arrested adults?

Yes / No

- b. In the last 36 months, has there been an occasion where a juvenile was held in secure custody outside of an OCA approved questioning room and there were adult prisoners who could be seen or heard in the vicinity?

Yes / No

NEW YORK STATE COMMISSION OF CORRECTION

If yes, what were the details? (Who, what, where, when.)

If answered yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

IV. JAIL REMOVAL

In accordance with Section 223 (a) (14) of the JJDP Act, no juvenile shall be detained or confined in any jail for adults.

a. In the last 36 months, has any juvenile been detained in your lockup with Office of Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details? (Who, what, where, when.)

b. In the last 36 months, has any juvenile been detained in your lockup without Office of Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details?

NEW YORK STATE COMMISSION OF CORRECTION

If either IV a or b were answered as yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance if needed.

V. RECORDS

Are juvenile records maintained separately from adult records?

Yes / No

Additional Comments:

Monitor's Signature: _____ **Date:** _____

II. DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

In accordance with Section 223 (a) (12) (A) of the JJDP Act, no **status offender** (ungovernable, truant or runaway, i.e. PINS) or non-offender (abused/neglected child) shall be held in secure custody while in an adult jail. A juvenile is considered to be in secure custody when he/she is physically secured to a cuffing rail or other stationary object or physically detained in a locked room, set of rooms or cell. This would include PINS/runaways that are 16 or 17 years of age.

- a. **In the last 36 months, has there been a situation where an officer has handcuffed a status offender to a stationary object located in your jail?**

Yes / No

If yes, what were the details? (Who, what, where, when.)

- b. **In the last 36 months, has an officer used a cell, locked room or set of rooms located in your jail to hold and/or question a status offender?**

Yes / No

If yes, what were the details? (Who, what, where, when.)

If either II a or b were answered as yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

Are such situations (a or b) recorded or documented?

Yes / No

If yes, how? If not, why not?

III. SIGHT AND SOUND SEPARATION

In accordance with Section 223 (a) (13) of the JJDP Act, no juveniles shall be held in secure custody in an adult jail where they have sight or sound contact with incarcerated or arrested adults.

In the last 36 months, has there been an occasion where a juvenile was held in secure custody and there were adult prisoners who could be seen or heard in the vicinity?

Yes / No

If yes, what were the details? (Who, what, where, when.)

If answered yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance and a form, if needed.

IV. JAIL REMOVAL

In accordance with Section 223 (a) (14) of the JJDP Act, no juvenile shall be detained or confined in any jail for adults.

a. In the last 36 months, has any juvenile been detained in this jail with Office of Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details? (Who, what, where, when.)

b. In the last 36 months, has any juvenile been detained in this jail without Office of

NEW YORK STATE COMMISSION OF CORRECTION

Children and Family Services (OCFS) approval?

Yes / No

If yes, what were the details?

If either IV a or b were answered as yes, was it reported to the Commission of Correction, using the **Record of Juvenile Detention Form**?

Yes / No

If not, advise that reporting is required and provide guidance if needed.

V. RECORDS

Are juvenile records maintained separately from adult records?

Yes / No

Additional Comments:

Monitor's Signature: _____ **Date:** _____

Facility Detention Information Sheet – 2010 (Form A)

Police Agency: _____

Location Type (e.g. Lockup, Police Station, Court Holding): _____

Location Name: _____

Address: _____

Are there times your department is responsible for detaining, or otherwise maintaining custody of individuals awaiting the disposition of their case, their court arraignment, or immediately following their arraignment?

Yes No

If yes, please describe the area used for this purpose, including whether it consists of physically restricting construction or hardware intended to enhance the area's security.

Does your police headquarters, station house, precinct and/or substation contain an area, distinct from any surrounding administrative space, which is primarily designated and/or used for the short term detention of persons awaiting disposition or arraignment in court?

Yes No

If yes, please provide a brief description of the area.

Does your department headquarters, station house, precinct and/or substation have a room, cell or other secure location used to confine individuals pending their court disposition, or arraignment in court?

Yes No

If yes, please provide a brief description of the area.

Does this location have a unique ORI number? Yes No

If yes, please provide the number

If the location **does not** have an ORI number, please fill out Form B (attached).

*In the interest of clarifying the Commission's definition of a lockup, be advised that pursuant to 9NYCRR, §7500.1(c), a police department, precinct house or station shall be deemed to operate a police lockup subject to the provisions of 9NYCRR Chapter IV, if any such place contains a discrete area, irrespective of design, configuration or equipment, designated and/or used for the temporary detention of persons awaiting disposition of their cases in the courts. For purposes of this definition, relevant detention circumstances shall include detention before arraignment in court or following court arraignment. Areas utilized for occasional and incidental detention of persons for purposes other than court dispositions shall not be deemed to qualify as a lockup in accordance with this definition.

* PLEASE COMPLETE A FORM FOR EACH SUBSTATION/PRECINT/SATELITE, ETC.*

Please provide the following information only if the location **does not** currently have an ORI number assigned: Form B

Agency Name _____

DEPARTMENT ORI _____

1. Address/ Physical Location of Headquarters:

Street _____

Street (2) _____

City: _____ State: _____ Zip Code: _____

** If you do not have an ORI number assigned to your location –check here

2. Address/ Physical Location of Substation/ Precinct/ Satellite, etc:

Location Name _____

Street _____

Street (2) _____

City: _____ State: _____ Zip Code: _____

3. Contact Information:

Title /Rank _____

Name _____

Telephone # (____) _____

Fax # (____) _____

E-Mail Address _____

* PLEASE COMPLETE A FORM FOR EACH SUBSTATION/PRECINT/SATELITE, ETC.*

APPENDIX XIII

The Patient Protection and Affordable Care Act



THE AFFORDABLE CARE ACT & LAW ENFORCEMENT

Success in implementing the Affordable Care Act has the potential to:

- Decrease crime
- Decrease recidivism
- Decrease Criminal Justice costs

While,

- Improving the health and safety of communities

THE AFFORDABLE CARE ACT

- Signed into law in March of 2010
- Includes a range of provisions that are especially relevant to people in the criminal justice system, including:
 - State options to expand minimum income eligibility threshold for Medicaid
 - Premium tax credits and cost sharing subsidies in state health insurance exchanges
 - Dependent coverage
 - Protection for pre-existing conditions
 - Coordinated medical and behavioral health care for chronic illnesses
 - Essential Health Benefits

JAIL AND PRISON POPULATION AND HEALTH

- They have disproportionately high rates of chronic disease and behavioral health disorders
- In a recent study published in Psychiatric Services one half of men and two thirds of women had been diagnosed with chronic physical health conditions such as asthma, diabetes, hepatitis, or HIV/AIDS
- Sixty five percent of all adults in the U.S. meet medical criteria for drug and /or alcohol use disorder
- In another study of more than 20,000 adults entering five local jails, researchers documented serious mental illnesses in 14.5 percent of the men and 31 percent of the women or in 16.9% of the study group. This is six times more prevalent than among the general population.

THE AFFORDABLE CARE ACT

Goals:

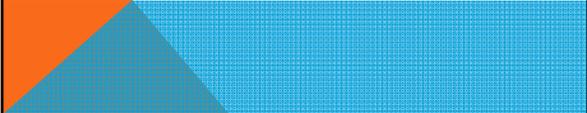
- Expand health coverage
- Contain rising health care costs
- Improve health care delivery systems

JAIL AND PRISON POPULATION AND HEALTH

- The rate of the prison population with and HIV diagnosis, nearly 2%, is four times higher than that of the general population
- Michigan's Department of Corrections increased its health care expenditures by 95 % between fiscal year 1999 and fiscal year 2008.
- Rates of Hepatitis C in prison settings are as high as 22% in some state prison settings.

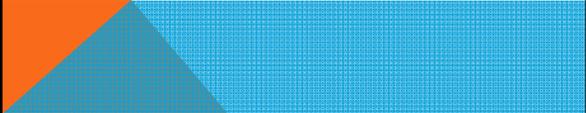
COMMON BARRIERS TO HEALTH CARE

- Data indicates that 1 year after release as many as 60 % of former inmates are not employed in a regular job.
- Most inmates leaving prison have low levels of education
- Most inmates leaving prison have few marketable job skills.
- Nationwide 35% of inmates who return to prison or jail for a second time lack a high school diploma or GED
- 40% - 60% of inmates exiting prisons and jails in a 2006 study lived in households earning less than \$20,000 a year.



MEDICAID

- An optional joint federal-state program that provides health insurance coverage to certain low-income populations
- Traditionally these populations have included:
 - Children
 - Elderly, people with disabilities
 - Pregnant women
 - The blind



INMATES AND MEDICAID

- Since 1997 Medicaid has not been available for inmates in institutions. However, according to the memo from the Center for Medicaid and Medicare Services (CMS) to the States, "for inmates of a public institution, federal funding is not available; however, an individual is not considered to be an inmate of a public institution if the individual has been admitted as an inpatient to a medical institution, separate from the penal system, for a 24 hour period or longer."
- Further guidance issued by CMS in 2004 reiterated that the above rule only relates to federal funds being available and does not affect the eligibility of an individual



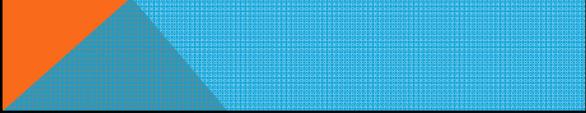
MEDICAID

Starting January 1, 2014, individuals qualify if:

- Household incomes are at or below 133% of the federal poverty level
- Roughly \$14,400 per year for a single person
- Roughly \$29,300 per year for a family of four

Estimates are that from 16 - 23 million people could be new enrollees

Many of these will be persons involved in the criminal justice system!



INMATES AND MEDICAID

- Thus the cost of inpatient services provided to Medicaid-eligible inmates can be supported by federal dollars....BUT prior to this use the inmate must be determined eligible by the state.
- So inmates can be enrolled in Medicaid before, during, and after the time in which they are incarcerated.
- Suspension of Medicaid benefits does not make the inmates ineligible for benefits at release
- Termination of Medicaid benefits makes the inmate ineligible for benefits at release
- Know your states rules related to this issue!



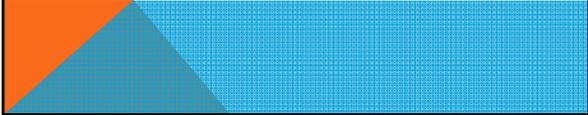
MEDICAID PROFILE

- National estimates of the impact of the Medicaid expansion on inmates indicate that 33.6 percent of inmates released annually (approximately 245,000 in 2009) will be eligible for Medicaid
- An additional 23.5 percent of inmates released annually (approximately 172,000 in 2009) will be eligible for subsidies through the state health insurance exchanges
- Community Oriented Correctional Health Services completed an analysis of 58 counties in California and estimated that 70 percent of males between ages 18 and 24 will be newly eligible for Medicaid



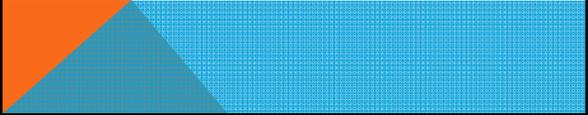
MEDICAID PROFILE

- New York City, which has already expanded eligibility to childless adults in the state, has stated that 80 percent of individuals in jails are either enrolled or eligible to be enrolled in Medicaid
- Illinois is estimating between 500,000 to 800,000 new Medicaid enrollees of which approximately 300,000 are anticipated to be in jail, prison, probation or on felony probation.



MEDICAID COVERAGE EXPANSION

- Covers young adults on parents policies to the age of 26
- Provides Medicaid coverage of tobacco cessation services for pregnant enrollees
- Increases funding in health profession scholarship and loan programs
- Supports training programs for nurses
- Increases funding for community health centers
- Targets outreach and enrollment efforts at vulnerable populations



MEDICAID COVERAGE'S CURRENTLY

Current coverage requirements include:

- Inpatient and outpatient hospital visits
- Physicians surgical and medical services
- Laboratory and x-ray services



MEDICAID DELIVERY SYSTEM REDESIGN AND PAYMENT REFORM

- Encourages new primary care models such as patient centered medical homes (PCMH) and team management of chronic diseases
- Creates Medicaid emergency psychiatric demonstration projects
- Provides for testing of new delivery and payment system models in Medicaid and Medicare
- Makes investments in health information technology
- Encourages efforts to reduce health care fraud and abuse



MEDICAID REQUIRED NEW COVERAGE'S

Beginning in 2014, coverage must include "essential health benefits" such as:

- Preventive services for chronic diseases
- Prescription drugs
- Rehabilitative services and devices
- Pediatric services including oral and vision care
- Mental health care
- Substance abuse services



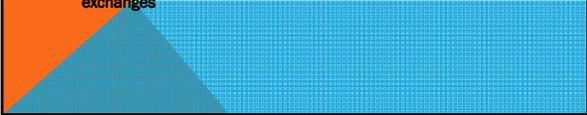
MEDICAID COST SHARING

- Federal government will initially cover 100 percent of the newly eligible Medicaid recipients
- Gradually this will be reduced:
 - From 100 percent for years 2014 through 2016
 - To 95% in 2017
 - To 94% in 2018
 - To 93% in 2019
 - By 2020 the federal share will be at 90% where it will stay
- The new law does not affect the federal - state share for those who were eligible previously for Medicaid



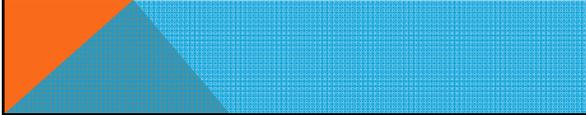
INDIVIDUAL MANDATE

- Requires most people to have a prescribed minimum level of health insurance beginning in 2014
- Those exempt are people below the filing threshold for federal income taxes (\$9,750 for individuals under 65)
- Penalties:
 - Year 1 - \$95
 - Year 2 - \$325
 - Year 3 - \$695 or 2.5 % of the individuals household income, whichever is greater.
- Those with incomes between 100 and 400 % of the FPL will be eligible for financial assistance in purchasing insurance from exchanges



INDIVIDUAL MANDATE AND THE EXCHANGE

- Sentenced individuals who are currently serving time in prison or jail are prohibited from using the state health insurance exchanges to enroll in a coverage plan
- Individuals who are incarcerated while awaiting adjudication of charges may enroll in the exchanges
- Seriously limits reentry efforts by prisons and jails who are wanting to assure continuity of care.



INDIVIDUAL MANDATE PENALTY EXEMPTIONS

- Those who are incarcerated for more than a month are exempt unless they are pending the disposition of charges
- Individuals who cannot afford coverage
- Taxpayers with income under 100 % FPL
- Members of Indian tribes
- Those with gaps in coverage for a continuous period of less than 3 months
- Those experiencing a hardship as determined by HHS



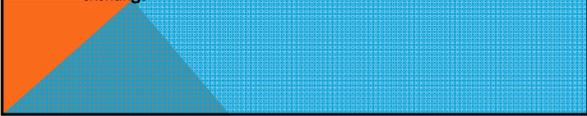
ENROLLMENT

Enrolling individuals into health insurance programs who leave prisons and jails is the key to connecting them to services that can improve individual and public health outcomes.



THE EXCHANGES

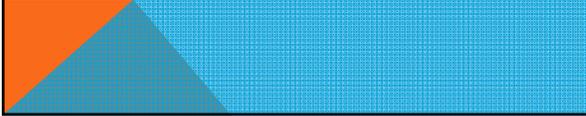
- State Health Insurance Exchanges are online marketplaces to purchase private health insurance plans
- By 2014 each state can either establish a state health insurance exchange or use a federally established exchange.
- Plans will make available sliding-scale tax credits and subsidies for households earning 100 – 400 % of the FPL
- For a household of 4, 100 % of the FPL is \$22,350
- For a household of 4, 400% of the FPL is \$89,400
- Not available if there is an affordable employer sponsored plan
- HHS is creating a simplified application form for the federal exchange



ENROLLMENT

What can corrections personnel do to facilitate Medicaid enrollment?

- Ensure enrollment at the time of release
- Establish relationships with the community health care providers who can help
- Learn new simplified enrollment procedures which will be on line
- Gather data on the inmate that will be needed for the enrollment ahead of time
- Work to make sure you have the option of 'suspending' coverage as opposed to terminating coverage. Coverage can generally be unsuspended in real time while reapplying can take from 4 – 6 weeks.



COMMUNITY HEALTH CENTERS

Community health centers (or federally qualified health centers) provide comprehensive primary care to individuals on a sliding fee scale. They can also help enroll people in Medicaid using the streamlined procedures. Many of these clinics also provide behavioral health care onsite or through referrals.

Do any of you have these in your state?

REFERENCES

DiPietro, Barbara. *Frequently Asked Questions: Implications of the Federal Legislation on Justice Involved Populations*. New York: Council of State Governments Justice Center, 2011.

Bainbridge, Andrea. *The Affordable Care Act and Criminal Justice: Intersections and Implications*. Bureau of Justice Assistance, U.S. Department of Justice, 2012.

McDonnell, Maureen. *Realizing the Potential of National Health Care Reform to Reduce Criminal Justice Expenditures and Recidivism Among Jail Populations*. Community Oriented Correctional Health Services, 2010.

Implications of The Affordable Care Act on People Involved with the Criminal Justice System. The Council of State Governments Justice Center, 2012.

INFORMATION TECHNOLOGY

The Affordable Care Act encourages:

- Shared electronic health records
- Care coordination within and across IT systems
- The use of data to inform clinical decisions
- The use of data to facilitate communication between clinicians and detention and corrections treatment providers
- Use of IT resources to facilitate quick and accurate enrollments into Medicaid and the Exchanges

WILL THE AFFORDABLE CARE ACT DO THIS?

Success in implementing the Affordable Care Act has the potential to:

- decrease crime
- recidivism
- Criminal justice costs

While,

- Improving the health and safety of communities

APPENDIX XIV

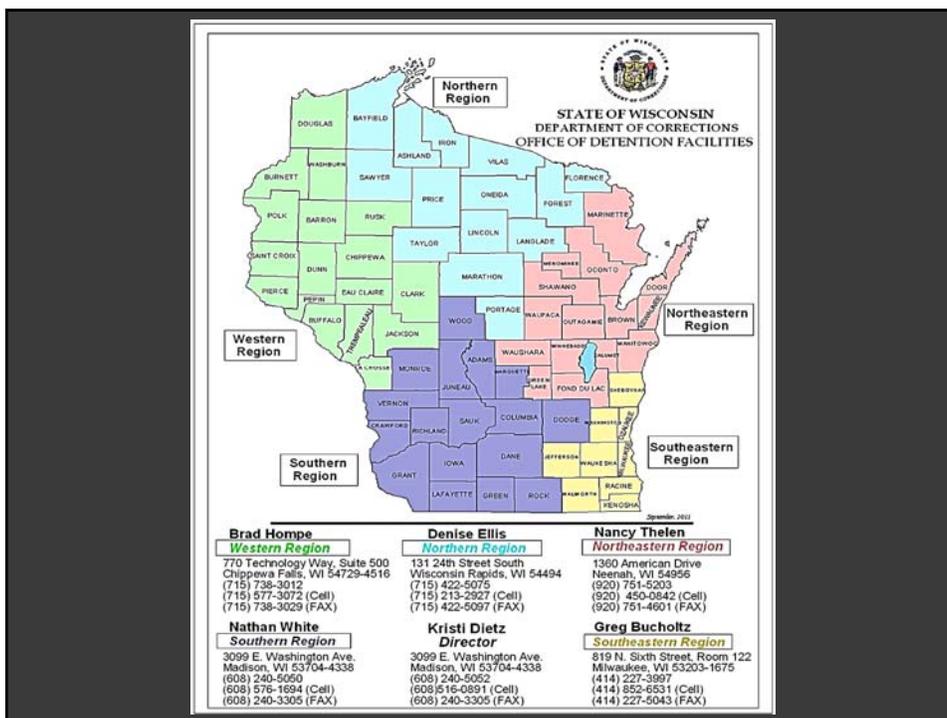
BJA 2012 PREA Demonstration Grant

BJA 2012 PREA Demonstration Grant

**NIC Chief Jail Inspectors
July 17, 2013**

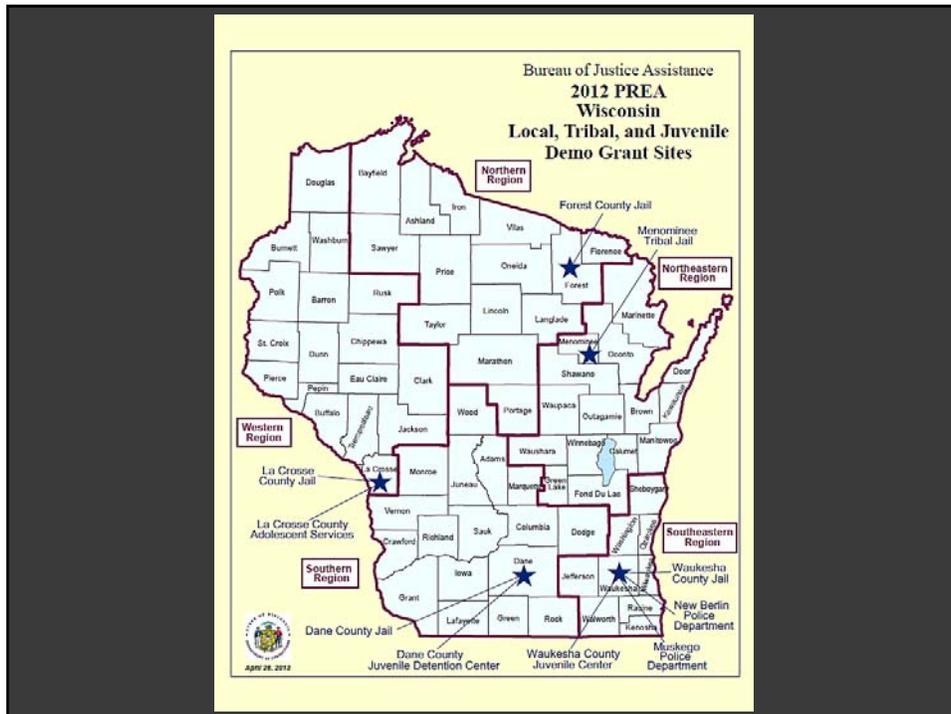
Kristi Dietz, Director
Office of Detention Facilities
DOC Tribal Liaison
WI Department of Corrections
Kristi.dietz@wi.gov
608-240-5052

Sexual safety is safety and security for all



An Overview from the Director of ODF

The Department of Correction's Office of Detention Facilities (ODF) has statutory authority, in accordance with Wis. Stats. § 301.37, for the regulation and oversight of local detention facilities, including county jails, houses of correction, secure juvenile detention centers, unlocked Huber facilities and municipal lockups. Through the Office of Detention Facilities, the Department establishes reasonable standards for the design, construction, repair, maintenance, operation and management of these facilities. Regionally located ODF Specialist staff (inspectors) conduct annual inspections of each facility, provide technical assistance to local jurisdictions, training to staff, and coordinate a variety of efforts to assist sheriffs, administrators, police chiefs and other local officials in the operation and management of their facilities.



Five Demonstration Grant Goals

1. To increase local participating agency awareness and understanding of PREA, PREA Standards, and sexual abuse that occurs in local correctional settings.
2. To ensure that each local participating agency's policies, procedures, and protocols conform to the national PREA Standards and correctional best practices.
3. To increase inmate awareness and understanding of sexual abuse, to improve the ability to recognize potentially dangerous situations, and to provide information on how to prevent being sexually victimized.
4. To provide selected staff from each participating agency with the skills and knowledge on how to train all current and future staff at their facility on PREA and sexual abuse.
5. To develop an effective and efficient strategy for each of the participating agencies to collect data on all PREA performance measures and offender treatment and counseling.

PREA Standards

- ❖ **Prevent, Detect and Respond to sexual abuse and sexual harassment in detention.**
- ❖ **Having a zero tolerance of sexual abuse, sexual harassment and staff sexual misconduct.**
- ❖ **Minimum standards that are accepted correctional best practices.**

PREA Standards Compliance

The PREA Standards do not *require* a jail to comply and there is no *penalty* for non-compliance as there is for a state agency (financial penalty). BUT, there are many reasons why a Sheriff and Jail Administrator would choose to comply:

- Ensuring the sexual safety of inmates, staff, and their community;
- Recognizing that prevention of inmate sexual assault and abuse is a core component of jail security operations;
- Mitigating against litigation as the PREA Standards are now considered accepted best correctional practices;
- Demonstrating to all stakeholders the agency's commitment to prevention of sexual abuse;
- Promoting thorough investigative practices to protect both staff and inmates;
- Ensuring that staff are appropriately trained in sexual assault prevention and response.

What is a Sexual Assault Response Team (SART)?

A SART is a multidisciplinary response team that provides direct intervention to sexual assault victims as they interact with the criminal justice system and coordinates effective investigative and prosecutorial efforts in connection with a report of sexual assault.

The SART is (minimally) comprised of representatives from law enforcement, SANE, advocacy, and prosecution. A SART is designed as a vehicle for collaboration, relationship building, training, education, and accountability among and between professionals, making the most of limited public resources.

A primary goal of a SART is to reduce further trauma to a sexual assault victim as she/he accesses the criminal justice system, allowing the victim to see the criminal justice system as an ally that gathers relevant information fairly and without prejudicing the facts.

The benefits of a SART also extend to cases of sexual abuse in detention. However, there are additional challenges in responding to these cases because the victim is incarcerated. Knowing the role and responsibility of each team member in addressing these challenges is essential in responding to sexual assault or abuse in detention.

Definition provided by the WI Adult Sexual Assault
Response Team Protocol

Multidisciplinary Response to a PREA Allegation

§ 115.51 Inmate reporting.

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request.



Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

An inmate may report sexual abuse, sexual harassment and or staff sexual misconduct behavior by a staff member or by another inmate.

Multidisciplinary Response to a PREA Allegation

Sexual Assault Nurse Examiner

§ 115.21 Evidence protocol and forensic medical examinations: (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such exams shall be performed by a SAFE or SANE where possible.



§ 115.82 Access to emergency medical and mental health services: Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services;

Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care

A **Sexual Assault Nurse Examiner (SANE)** is a qualification for forensic nurses who have received special training to conduct sexual assault evidentiary exams for rape victims

Multidisciplinary Response to a PREA Allegation

Law Enforcement

§ 115.21 Evidence protocol and forensic medical examinations.
 (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

§ 115.22 Policies to ensure referrals of allegations for investigations. (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior.

§ 115.34 Specialized training: Investigations. (a) The agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

Multidisciplinary Response to a PREA Allegation

WI State Statute 940 - Second degree sexual assault: You are guilty of a Class C felony if you have sexual contact or sexual intercourse with an individual who is confined in a correctional institution and you are a correctional staff member.

Other possible criminal actions:

- 939.22(19) Intimate Parts
- 939.22(34) Sexual Contact
- 939.22(36) Sexual Intercourse
- 940.42 Intimidation of Witness (Fel. & Mis.)
- 940.44 Intimidation of Victim (Fel. & Mis.)
- 943.30 Threats to Injure or Accuse of Crime
- 944.20 Lewd & Lascivious
- 948.02 Sexual Assault of a Child
- 948.07 Child Enticement

Prosecution

“Sexual abuse is never a laughing matter, nor is it punishment for a crime. Rather, *it is* a crime, and it is no more tolerable when its victims have committed crimes of their own.”

PREA Exec Summary

The **District Attorney (DA)**, in many jurisdictions in the United States, is the elected or appointed official who represents the government in the prosecution of criminal offenses

Multidisciplinary Response to a PREA Allegation

§ 115.21 Evidence protocol and forensic medical examinations. The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. As requested by the victim, the victim advocate shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

§ 115.53 Inmate access to outside confidential support services. The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.



Advocacy

The role of the advocate in response to sexual assault is crucial. There is no other discipline whose primary function is to advocate for the interest and wants of the victim. Unlike most other justice system based team members, the advocate's response and relationship to the victim can continue long after the case is resolved.

Advocates can provide crisis intervention services, support, information, and referrals. They can accompany victims through the healthcare and criminal justice systems.

Most importantly, they can bear witness to the victim's experience.

Multidisciplinary Response to a PREA Allegation

Sexual abuse in detention can have severe consequences for victims, for the security of correctional facilities, and for the safety and well-being of the communities to which nearly all incarcerated persons will eventually return.

A major benefit of this model is that it provides a collaborative, victim-centered response to PREA cases by reducing the potential for re-victimization by the criminal justice system and begins the process of healing for the victim.

This multidisciplinary response also ensures an offender-focused response by gathering all of the facts of a case, drawing attention to the actions and behaviors of the offender, and holding the perpetrator of the assault accountable for their actions.



Additional Resources.....

National Institute of Corrections
www.nicic.gov

The National PREA Resource Center
www.prearesourcecenter.org

Federal Prison Rape Elimination Act
www.nicic.gov/prea

PREA Standards Audit Instrument
www.prearesourcecenter.org/library/search?keys=&cat=4

Sexual safety is safety and security for all

The Success of Combating SA in Detention will depend upon...

- ❖ **Effective agency and facility leadership;**
- ❖ **Development of an agency culture that prioritizes efforts to combat sexual abuse;**
- ❖ **Culture can not be directly mandated by a rule, but the implementation of the standards will help foster a change in culture.**

APPENDIX XV

Texas Commission on Jail Standards Overview

Texas Commission on Jail Standards

The Texas Commission on Jail Standards is the regulatory agency for all county jails and privately operated municipal jails in the state. Our mission is to assist local governments in providing safe, secure and suitable local jail facilities through our provision of the following services.

- The establishment of reasonable minimum standards for the construction and operation of jails;
- The monitoring and enforcement of compliance with adopted standards through on-site inspections;
- Review and comment on all jail construction documents;
- The provision of consultation, training and technical assistance on efficient, effective and economical means of jail construction and management to include:
 - a. **staffing and facility needs analyses**
 - b. **management and construction technical assistance bulletins**
 - c. **on-site consultations**
 - d. **Jail population projections and trend reports**
 - e. **regional training**

House Bill 272

During its regular session of 1975, the 64th Legislature enacted House Bill 272 creating the Texas Commission on Jail Standards in an effort to end federal court intervention into county jail matters and return jail control to state and local jurisdictions. Formerly through Title 81 of the Civil Statutes and currently through Chapters 499 and 511 of the Government Code, the state has evinced a strong commitment to improving conditions in the jails by granting the Commission the authority and responsibility to promulgate and enforce minimum standards for jail construction, equipment, maintenance, and operation. Related duties and rules are set forth in Chapters 351 and 361 of the Local Government Code, Title 37 of the Administrative Code, and Minimum Jail Standards.

Formerly through Title 81 of the Civil Statutes and currently through Chapters 499 and 511 of the Government Code, the state has evinced a strong commitment to improving conditions in the jails by granting the Commission the authority and responsibility to promulgate and enforce minimum standards for jail construction, equipment, maintenance, and operation. Related duties and rules are set forth in Chapters 351 and 361 of the Local Government Code, Title 37 of the Administrative Code, and Minimum Jail Standards.



 **Texas Commission on Jail Standards**
Commission Members

 Judge Donna S. Klager (Chair) County Judge, Burnet County, Burnet, Texas 09-2007 to 01-31-2019	 Commissioner Stanley D. Egger (Vice-Chair) County Commissioner, Taylor County, Abilene, Texas 12-2004 to 01-31-2017	 Dr. Michael M. Seale, M.D. Medical Director, Harris County Sheriff's Office, Houston, Texas 09-2002 to 01-31-2017
 Allan D. Cain Carthage, Texas 03-2011 to 01-31-2017	 Irene A. Ammendt Austin, Texas 09-2007 to 01-31-2015	 Sheriff Dennis D. Wilson Sheriff, Limestone County, Groesbeck, Texas 5-2013 to 01-31-2015
 Sheriff Gay Painter Sheriff, Midland County, Midland, Texas 02-2009 to 01-31-2015	 Jerry W. Lowry New Caney, Texas 04-2008 to 01-31-2019	 Larry S. May Sweetwater, Texas 04-2008 to 01-31-2019

Executive Director



Brandon Wood

Assistant Director



Shannon Herklotz

TCJS STAFF

 Brandon Wood Executive Director	 Shannon Herklotz Assistant Director		
 Rodney Valls Staff Services Officer	 Ralph Harper Accountant	 Dianna Spiller Research Specialist	 Luz Lozano Program Specialist
 Anthony "Bubba" Mikes Program Specialist	 Crystal Irvin Program Specialist	 James Short Planning and Construction	 Zach Anderson IT
 George Johnson Inspector V	 Fred St. Amant Inspector V	 Jackie Semmler Inspector V	 Jimmy Barton Inspector V

Announced Inspections

- Prior to September 1, 2009, only 20 % of jail inspections were unannounced.
- 80% of jails were announced annual inspections.
- Jails had at least a 30 days notice prior to the annual inspection.
- Gave the jail the opportunity to prepare for the inspection.

The Sunset Advisory Commission

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

Unannounced Inspections

Sunset Review – urged the commission to require TCJS inspectors to conduct unannounced inspections for high-risk facilities as this is of fundamental importance to the safety and well-being of both inmates and staff.

- All inspections are now unannounced.

FYI

In fiscal year 2008, the agency completed 350 inspections, including annual, repeat, and special inspections. As of January 1, 2009, 41 jails were non-compliant. Hopkins, San Patricio, and Smith Counties were under a Commission enacted remedial order.

FYI

In fiscal year 2013, the agency completed 275 inspections, including annual, repeat, and special inspections. As of July 18, 2013, only 5 jails are in non-compliance with minimum jail standards. Smith County is the lone facility that is still under a Commission enacted remedial order.

Technical Assistance

- **Planning and Construction**
- **Staffing analysis**
- **Operational Plans**
- **Inspections**
- **Complaints**
- **Deaths**
- **Escapes**
- **Training**
- **Research**

Program Specialists

- Investigates Complaints
- Investigates In Custody Deaths
- Investigates Escapes
- Prepares Paper Ready and Population Reports
- Assists in approval of Operational Plans
- Prepares Staffing Analysis
- Prepares Facility Needs Analysis
- Consults, corresponds and speaks with other departments and/or agencies in furthering interest and/or action regarding a plan or program.

Research Specialist

- Searches and reviews criminal justice literature to develop new research proposals.
- Collects, compiles, analyzes and prepares data for presentations.
- Tracks legislation and provides bill analysis during legislative sessions.
- Performs case law research using online legal research tools and law library resources.

Inspectors

- Conducts inspections and renders required reports (Inspections include: construction, equipment, maintenance and operation of jails. Custody, care, and treatment of inmates. The number of jail supervisory personnel and programs and services to meet the needs of inmates and programs of rehabilitation, education and recreation in the jails.
- Completes Inspection Worksheets
- Provides on-site technical assistance to counties
- Provides training sessions to counties

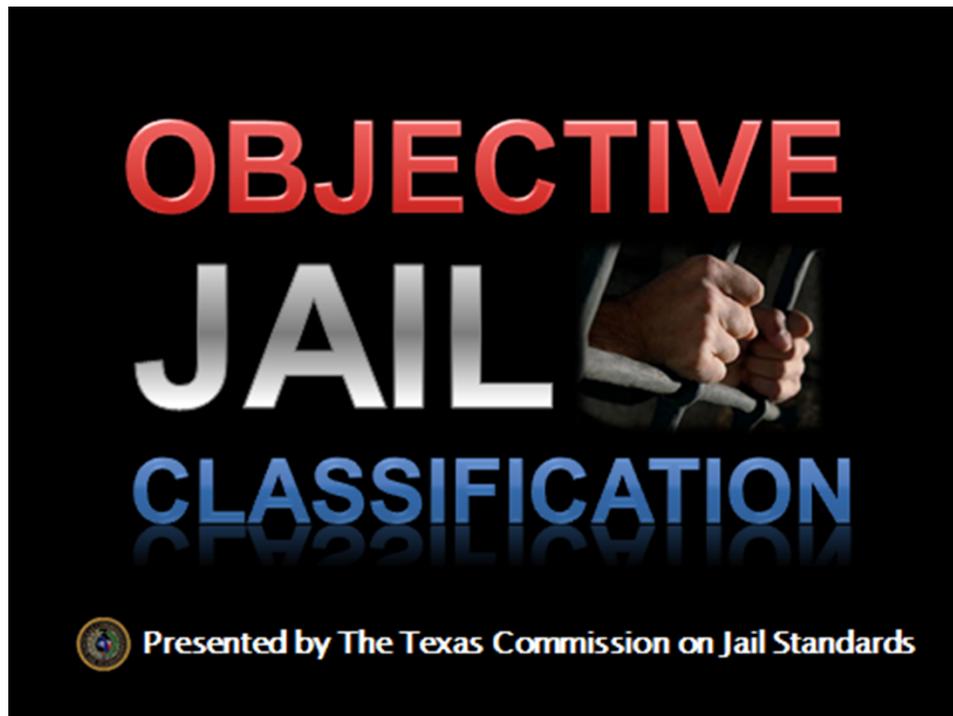
Planning and Construction

- Assists in the monitoring and evaluation of plans and programs to ensure compliance with administrative rules and legislation.
- Conducts, reviews and comments on construction documents for compliance with Minimum Jail Standards.
- Coordinates and maintains computer based information systems for annual jail inspections, jail occupancy inspections, facility surveys, variances, planners, and vendors.
- Researches and demonstrates ways to reduce cost of jail construction and operations.

Training

The Texas Commission on Jail Standards has created and provides training for facilities. This training is offered to agencies at no cost. The Texas Commission on Jail Standards in conjunction with Texas Jail Association and the Correctional Management Institute of Texas provides training at annual conferences and in various other sites across the state.

In conjunction with CMIT at Sam Houston State University, TCJS is able to provide TCLE (TCLEOSE) credit hours for all of our classes we developed.



The Basics



Escapes



Required Reporting



TCJS REQUIRED REPORTING



BY THE NUMBERS
WITH
BUBBA MIKESH

Revised 5-31-13

Jail Administration: Management & Operations



Texas Commission on Jail Standards

Enhancing Technical Assistance

In an attempt to ensure that facilities remain in compliance with minimum jail standards, TCJS staff put their heads together and created a training module to help Sheriff's, Chief Deputies, Jail Administrators and Jailers understand "What to Expect During an Inspection".

Revised 5/31/2013



What to Expect During Jail Inspection



Presented by The Texas Commission on Jail Standards

 **New Commissioner's
Workshop**





Jail Management and Operations



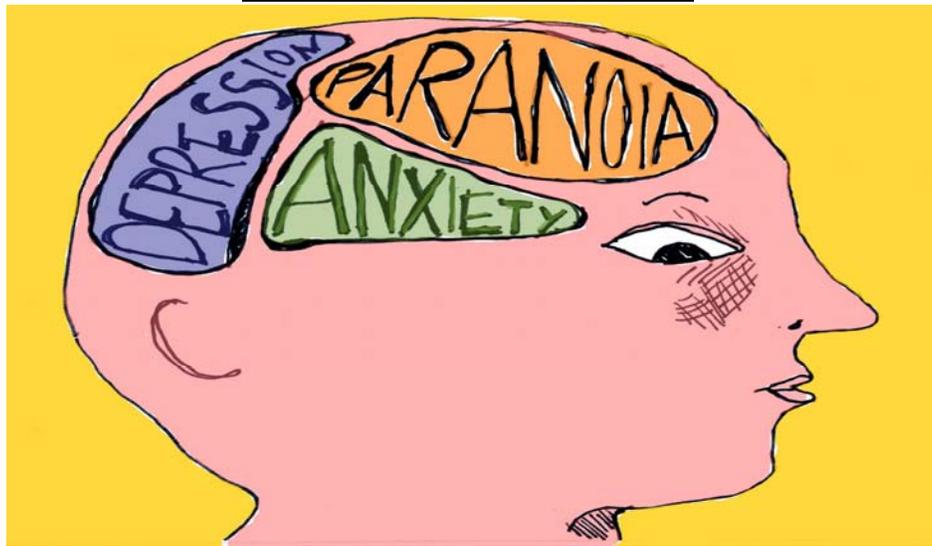
**for
Newly Elected Sheriff's**

Jail Management and Operations for Chief Deputies



Presented by The Texas Commission on Jail Standards

Assessing For Suicide, Medical and Mental Impairments



The Commission maintains a user-friendly structure. Staff strive to provide prompt, courteous and responsive assistance to all requests received by the Commission.

TCJS has gone global.... Facebook and Twitter are now in our arsenal....



Facebook: Texas Commission on Jail Standards
Twitter: @TxCommJailStand

APPENDIX XVI

Legal Update

NIC Chief Jail Inspectors' Network Meeting

Legal Update

July 2013

Grace Philips

New Mexico Association of Counties

gphilips@nmcounties.org

(505) 983-2101

Strip Searches After *Florence*

Prior to *Florence v. Board of Chosen Freeholders*, 132 S. Ct. 1510 (2012) most circuits interpreted the 1979 Supreme Court decision of *Bell v. Wolfish*, 441 U.S. 520 (1979) to prohibit blanket strip searches of all arrestees absent reasonable suspicion to believe an arrestee was carrying drugs, weapons or contraband.

Exceptions:

Powell v. Barrett, 541 F.3d 1298 (11th Cir 2008) (holding visual strip searches of detainees without reasonable suspicion and prior to the detainees' entering the general jail population are constitutional)

Bull v. City and County of San Francisco, 595 F.3d 964 (9th Cir. 2010) (reasonable suspicion not required prior to moving arrestees into general housing)

Florence

Reasonable suspicion is not required prior to moving arrestees into **general population**.

“Correctional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry on their bodies. Facility personnel, other inmates, and the new detainee himself or herself may be in danger if these threats are introduced in the jail population.”

Court balanced the institution’s need for the search against how intrusive it was.

Court recognized multiple justifications for observing naked body of arrestee: 1. Detection and deterrence of smuggling weapons, drugs or other contraband into the facility, 2. Identification of gang members by observing their tattoos, and 3. Prevention of disease, specifically MRSA.

“Maintaining safety and order at these institutions requires the expertise of correctional officials who must have substantial discretion to devise reasonable solutions to the problems they face. The Court has confirmed the importance of deference to correctional officials and explained that a regulation impinging on an inmate’s constitutional rights must be upheld “if it is reasonably related to legitimate penological interests.”

“Jails are often crowded, unsanitary, and dangerous places. There is a substantial interest in preventing any new inmate, either of his own will or as a result of coercion, from

putting all who live or work at these institutions at even greater risk when he is admitted to the general population.”

“People detained for minor offenses can turn out to be the most devious and dangerous criminals”

“Exempting people arrested for minor offenses from a standard search protocol...may put them at greater risk and result in more contraband being brought into the detention facility.”

Caveat:

“This case does not require the Court to rule on the types of searches that would be reasonable in instances where, for example, a detainee will be held without assignment to the general jail population and without substantial contact with other detainees. The accommodations provided in these situations may diminish the need to conduct some aspects of the searches at issue.”

“It is important to note, however, that the Court does not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population. Most of those arrested for minor offenses are not dangerous, and most are released from custody prior to or at the time of their initial appearance before a magistrate. In some cases, the charges are dropped. In others, arrestees are released either on their own recognizance or on minimal bail. In the end, few are sentenced to incarceration. For these persons, admission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable, particularly if an alternative procedure is feasible...The Court does not address whether it is always reasonable, without regard to the offense or the reason for detention, to strip search an arrestee before the arrestee’s detention has been reviewed by a judicial officer. The lead opinion explicitly reserves judgment on that question...In light of that limitation, I join the opinion of the Court in full.” Justice Alito, concurring.

Courts after *Florence* have declined to dismiss strip search cases where the plaintiffs have alleged that there were other available facilities removed from the general population in which a detainee not yet brought before a magistrate could have been held. See *Fonder v. Sheriff of Kankakee County*, 2012 WL 4321714 (C.D. Ill Aug 31, 2012); *Allen v. Union County, et al.*, 2:08-cv-00711-KSH-CLW (D.N.J. Feb. 26, 2013) and *Brownell. v. Montoya*, Civ. No. 11-0979 MV/GBW (D.NM March 28, 2013). Several other courts have also interpreted *Florence* as embracing an exception to a blanket rule that all persons may be strip searched after they are arrested for individuals who were not going to be introduced into general population. See *Small*

v. Wetzel, 2013 U.S.App. LEXIS 1172 (3rd Cir. June 11, 2013); *Ellsworth v. Wachtel*, 2013 U.S. Dist. LEXIS 4486 (N.D.N.Y. Jan. 11, 2013); *Banaei v. City of Evanston*, 2012 U.S. Dist. LEXIS 132801 (C.D. Ill. Aug. 31, 2012).

Haas v. Burlington County, 2013 U.S. Dist. LEXIS 91590 (D. NJ June 30, 2013) Civil Nos. 08-1102; 10-009 (NLH/JS) Plaintiffs motion to amend their complaint granted below because 1) they were arrested for what appeared to be minor offenses; 2) They were strip searched before they were seen by a judicial officer; and 3) it was feasible for them to be segregated from the general population. On appeal the district court agreed that *Florence* leaves open the possibility of a narrow exception restricting the ability of corrections officials to strip search certain arrestees. The *Florence* holding is limited to those arrestees who will be admitted to the general population. Because Justice Alito would not have joined the majority without the limitations his “conurrence may be viewed as the narrowest grounds upon which the majority opinion is founded.” Court affirmed order allowing plaintiffs complaint to be amended because they alleged that they could have been segregated from general population.

The *Haas* opinion also includes an interesting analysis of the scope of the exception regarding individuals whose detention has not been reviewed by a judicial officer. When an arrest is made pursuant to a judicially authorized warrant it could be fairly said that such a person is an arrestee whose detention has been reviewed by a magistrate or other judicial officer.

Powell v. Sheriff, 2013 U.S. App. LEXIS 4653 (11th Cir. 2013) Strip searches in connection with entry or reentry into the jail’s general population constitutional even though plaintiffs argued that they did not need to be returned to general population to retrieve their belongings after they were ordered released by the judge. “There is not constitutional right, much less a clearly established one, to be held in a particular cell or a separate area of a jail and not be placed back in the general jail population... Under both *Florence* and *Powell III*, jailers do not violate detainees’ Fourth Amendment rights by visually searching them for legitimate safety and penological reasons prior to admitting or readmitting them to the jail’s general population.”

Beaulieu v. Ludeman, 690 F.3d 1017 (8th Cir. 2012) courts must defer to the judgment of correctional officials in addressing searches of state civilly committed state sex offender program patients. Regulation impinging on an inmate’s constitutional rights must be upheld if it is reasonably related to legitimate penological interests. Officials are not required in all cases to apply the least-intrusive methods or proceed through a series of progressively more invasive techniques en route to conducting highly invasive searches. Deterring the possession of contraband depends in part on the ability to conduct searches without predictable exceptions. Strip searches before a patient left the secure perimeter was to protect the transport team and the public.

Kitchens v. Pierce, 2013 U.S. App. LEXIS 12057 (9th Cir June 14, 2013) because Kitchens was housed, at least at some point, in an area with other prisoners, his rights were not violated.

Both the justification for and manner of the search must be constitutional. The manner concerns who, how and where. Manner will play central role in searches involving transsexual, transgendered and intersex arrestees

Other considerations: utility of strip searches, alternative imaging technology, state constitutions, state statutes, insurance coverage, operational needs, litigation climate

Postcard Only Rules

The right to create and maintain connections with the outside world is protected by the First Amendment but subject to restriction.

“Communication by letter is not accomplished by the act of writing words on paper. Rather, it is effected only when the letter is read by the addressee.” *Procunier v. Martinez*, 416, U.S. 396, 408 (1974)

Censorship of mail that unduly complained or magnified grievances or that expressed “inflammatory political, racial, religious, or other views and beliefs” or that contained “lewd obscene, or defamatory” material unconstitutional. *Procunier*. “The regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression.” *Id.*

Spence v. Nelson, 2013 U.S. App. LEXIS 5136 (5th Cir. Filed March 14, 2013) reinstated inmate’s claim for nominal and punitive damages based upon policy of prohibiting inmates from receiving packages from Iran.

1st Amendment protects prisoner correspondence with outsiders and 14th Amendment requires at least minimal Due Process.

- Notice that the letter or publication was rejected
- Reasonable opportunity for the author to protest to someone other than the person who originally disapproved of the correspondence

Turner v. Safley, 482 U.S. 78 (1987) “reasonable relationship” for intra-prison communications and “substantial governmental interest” for communication with outsiders.

1. Is the regulation rationally related to a legitimate and neutral governmental objective?
2. Are there alternative avenues for the inmate to exercise the right?
3. What impact would accommodating the asserted right have on other guards and prisoners?
4. Are there easy and obvious alternatives to the regulation that indicate it is an exaggerated response by prison (or jail) officials?

Postcard Only Rules are drawing a lot of litigation

1. Interpersonal communications (Pro Se and Prison Legal News cases)

Prison Legal News v. Chapman, 2013 U.S. Dist. LEXIS 42066, 2013 WL 1296367 (M.D. Ga. Mar. 26, 2013) Motion to enjoin sheriff's postcard only rule denied.

Althouse v. Palm Beach County Sheriff's Office, 2013 U.S. Dist. LEXIS 18602, 2013 WL 536072 (S.D. Fla. Feb. 11, 2013). The Sheriff's Office's postcard policy does not impede Plaintiff's First Amendment rights because it is content neutral, it logically advances the goals of institutional security and safety, and it is not an exaggerated response to those objectives. Plaintiff is free to send as many postcards as he wishes, to as many inmates as he chooses. The Sheriff's Office has reasonably concluded, based on unrebutted record evidence, that restricting the manner in which Plaintiff may deliver those communications makes its facilities safer and more secure. The Court must accord "substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." citing *Bazzetta*, 539 U.S. at 132.

Prison Legal News v. Columbia County, 2013 U.S. Dist. LEXIS 58669 (United States Dist. Ct for the District of Oregon, Decided April 24, 2013) (following trial the court issued a permanent injunction enjoining Defendants from restricting all incoming and outgoing inmate personal mail to postcards only). "In the absence of evidence demonstrating an inmate mail security problem, and without credible explanation of why a postcard-only policy is more effective at preventing the introduction of contraband than opening envelopes and inspecting their contents, the Court concludes that the postcard-only policy is not rationally related to enhancing jail security."

"The postcard only policy blocks one narrow avenue for the introduction of contraband—within envelopes—at too great an expense to the First Amendment rights of inmates and their correspondents." *Id.*

Postcard only cases are a mixed bag and, therefore, jurisdiction specific.

2. Publications

The *Turner* applies to unsolicited publications addressed to specific inmates. *Hrdlicka v. Reniff*, 656 F.3d 943 (9th Cir 2011). It is well-established that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution, nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the 'inside.'" *Thornburgh v. Abbott*, 490 U.S. 401, 407, 109 S. Ct. 1874 (1989) (citing *Turner v. Safley*, 482 U.S. 78, 84, 94-99, 107 S. Ct. 2254 (1987)). Authors have a Due Process right with respect to even unsolicited mail.

Determine whether to restrict magazines and newsletters on an issue by issue basis and if rejected:

1. Provide notice to the inmate and the publisher that includes the reason for the decision
2. Provide the inmate and publisher with the opportunity to appeal the decision to a person of authority. *Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Montcalm Publishing v. Beck*, 80 F.3d105 (4th Cir. 1996); *Martin v. Kelly*, 803 F.2d 236 (6th Cir. 1986); *Rogers v. Martin*, 84 Fed. Appx. 577, 579 (6th Cir. 2003); *Jacklovich v. Simmons*, 392 F.3d 420, 433 (10th Cir. 2004)

The notice should identify the publication, the reason(s) for appeal and details regarding how to appeal including the deadline and address.

Prison Legal News v. Babeu, 2013 U.S. Dist. LEXIS 38606, 2013 WL 1149735 (D. Ariz. Mar. 19, 2013) Blanket ban on newspapers and magazines under postcard only rule unconstitutional and absence of notice and appeal violate clearly established constitutional law.

Books

Publishers have standing to challenge governmental interference with attempt to sell or distribute written material. *Prison Legal News v. Livingston*, 683 F.3d 201 (5th Cir. 2012). However, the right to receive notice exists only to effectuate the right to be heard, and therefore is inapplicable where a party has no right to participate in the decision-making process. *Id.* Publisher was therefore not entitled to notice every time their book was rejected by the prison system.

Shackling Pregnant Inmates

Courts have found that shackling inmates while they are in labor is a clearly established violation of the Eighth Amendment prohibition against cruel and unusual punishment. *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir 2009); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563 (2013) but see *Fain v. Rappahannock Regional Jail*, 2013 WL 3148145 (E.D. Virginia June 19, 2013) granting qualified immunity.

The American Medical Association, Federal Bureau of Prisons, US Marshals Service, American Correctional Association, American College of Obstetricians and Gynecologists, and the American Public Health Association all oppose shackling women during labor, delivery, and postpartum recovery.

State laws generally prohibit use of restraints during labor and delivery but provide for individualized exceptions for safety and security and flight risk. Some states provide restrictions on use of restraints during second and third trimesters, some require detailed documentation and justification when restraints are used pursuant to exceptions to state law, some restrict the presence of security staff from the delivery room, some require medical staff to be present during strip searches and some require training and notice of the restraint restrictions to be provided to pregnant inmates.

State Statutes:

Arizona Revised Statutes Annotated TITLE 31. CHAPTER 5. ARTICLE 1. § 31-601. Pregnant prisoners; restraints; written findings; rules; definitions

A correctional institution shall not use restraints on a prisoner or detainee who is being transported for delivery or during labor, delivery and postpartum recovery, unless medical staff requests or there is an individualized determination of extraordinary circumstances. Leg restraints, waist restraints or restraints that hinder the ability of the physician to move the prisoner or detainee, as determined by the physician shall not be used on any prisoner or detainee who is in labor or delivery.

California Cal Pen Code § 3407 Pregnant inmates

- (a) An inmate known to be pregnant or in recovery after delivery shall not be restrained by the use of leg irons, waist chains, or handcuffs behind the body.
- (b) A pregnant inmate in labor, during delivery, or in recovery after delivery, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public....

Colorado C.R.S. 17-1-113.7

Requires least restrictive restraints necessary to ensure safety when staff have actual knowledge or a reasonable belief that an inmate is pregnant and during postpartum recovery. Prohibits use of restraints of any kind on a pregnant inmate during labor and delivery (medical and security exceptions).

Delaware Code Annotated TITLE 11.PART IV.CHAPTER 66. § 6603. Use of restraints on pregnant prisoners

Prohibits use of restraints on pregnant prisoners and detainees during labor, delivery, or postpartum recovery unless extraordinary circumstance (exceptions).

Florida Fla. Stat. § 944.241 (3) Restraint of prisoners.

Prohibits use of restraints on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery (exceptions for restraints applied in least restrictive manner). Prohibits use of leg, ankle, or waist restraints on any pregnant prisoner who is in labor or delivery without exception.

Hawaii Code Annotated DIVISION 1.TITLE 20 CHAPTER 353 PART VI § 353-122.

Prohibits use of restraints of any kind during transport of any committed female during the third trimester of her pregnancy, postpartum recovery; or during any portion of her pregnancy, if her physician so orders except in extraordinary circumstances. Prohibits use of restraints during labor or childbirth (exceptions for least restrictive available). Restricts correctional personnel from delivery room unless female and requested by medical personnel.

Idaho Code Annotated PENAL CODE TITLE 20.CHAPTER 9. § 20-902. Restrictions on restraint of pregnant prisoners -- Extraordinary circumstance

Prohibits use restraints of any kind on a prisoner known to be pregnant during labor and delivery, (exceptions) for least restrictive necessary.

Illinois Compiled Statutes Annotated § 55 ILCS Sec. 3-15003.6. Pregnant female prisoners.

Prohibits county department of corrections from applying security restraints to a pregnant prisoner or one in postpartum recovery (exceptions for exceptional circumstances and medically ordered therapeutic restraints).

Nevada 2011 Bill NV A.B. 408 NRS 211.155 Limitations on use of restraints on prisoner who is in labor, delivering her baby or recuperating from delivery.

Prohibits use of restraints during labor, delivery and recuperation (exceptions for least restrictive restraints for flight risk and safety and security).

New Mexico Statutes Annotated § 33-1-4.2. Restraints on pregnant prisoners

Requires least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the second or third trimester of pregnancy. Prohibits restraints of any kind on an inmate who is in labor, delivering her baby or recuperating from the delivery (exceptions for least restrictive).

New York Consolidated Laws Service CORRECTION LAWARTICLE 22. § 611. Births to inmates of correctional institutions and care of children of inmates of correctional institutions

No restraints of any kind shall be used on pregnant woman during transport to or from the hospital, institution or clinic (exceptions for extraordinary circumstances where restraints are necessary to prevent such woman from injuring herself or medical or correctional personnel, such woman may be cuffed by one wrist). No restraints of any kind shall be used when such woman is in labor, admitted to a hospital, institution or clinic for delivery, or recovering after giving birth.

Pennsylvania Statutes, Annotated TITLE 61.PART II.CHAPTER 11.SUBCHAPTER A.§ 1104.

Requires state correctional institutions to report each restraint applied to a pregnant prisoner or detainee specifying what led to the determination that the prisoner represented a substantial risk of imminent flight or that restraint was necessary to ensure safety and security.

Rhode Island § 42-56.3-3 Restraint of prisoners and detainees.

Prohibits use of handcuffs, shackles or waist restraints during childbirth (exceptions) and restricts restraints to least restrictive and medically appropriate during second or third trimester.

Texas Tex. Gov't § 501.066. Restraint of Pregnant Inmate or Defendant

Texas Tex. Local Gov't Code § 361.082. Restraint of Pregnant Inmate or Defendant

Texas Tex. Local Gov't Code § 244.0075. Restraint of Pregnant Juvenile

Prohibits use of restraints during labor, delivery or recovery from delivery unless the director or director's designee determines that the use of restraints is necessary to ensure safety and security

or prevent a substantial risk that the woman will attempt escape. Restraints if used must be least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Vermont 28 V.S.A. § 801a Pregnant inmates

The department of corrections shall not routinely restrain pregnant inmates who are beyond their first trimester of pregnancy in the same manner as other inmates, recognizing that to do so might pose undue health risks for the mother and unborn child. Unless the inmate presents a substantial flight risk or other extraordinary circumstances dictate otherwise, mechanical restraints of any kind shall not be used on a pregnant inmate in active labor or while in recovery at the hospital. (exceptions require written findings).

Washington Rev. Code Wash. (ARCW) § 13.40.651

Annotated Revised Code of Washington TITLE 13.CHAPTER 13.40.

§ 70.48.500. Use of restraints on pregnant women or youth in custody -- Allowed in extraordinary circumstances

§ 72.09.651. Use of restraints on pregnant women or youth in custody -- Allowed in extraordinary circumstances

§ 13.40.650. Use of restraints on pregnant youth in custody -- Allowed in extraordinary circumstances

§ 72.05.450. Use of restraints on pregnant youth in custody -- Allowed in extraordinary circumstances

§ 13.40.651. Use of restraints on pregnant youth in custody -- Provision of information to staff and pregnant youth in custody

§ 72.05.451. Use of restraints on pregnant youth in custody -- Provision of information to staff and pregnant youth in custody

§ 72.09.652. Use of restraints on pregnant women or youth in custody -- Provision of information to staff and pregnant women and youth in custody

Except in extraordinary circumstances no restraints of any kind may be used on any incarcerated pregnant woman or youth during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. While the pregnant woman or youth is in labor or in childbirth no restraints of any kind may be used. (exceptions for hospital restraints for the medical safety of a patient ordered by treating physicians if least restrictive). Restricts custody personnel from delivery room unless requested by medical personnel and female (if practicable).

Staff as well as pregnant women and youth are to be advised of these provisions.

West Virginia W. Va. Code § 25-1-16. Transfer of inmates of state institutions or facilities.

West Virginia W. Va. Code § 31-20-30a. Mechanical restraints during pregnancy.

In providing or arranging for the necessary medical and other care and treatment of a pregnant inmate, the warden or administrator of the correctional facility shall take reasonable measures to assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy (exceptions for risk of escape and safety and security after medical consultation).

Housing Inmates with Serious Mental Health Disorders

Failing to provide medical care to prisoners violates the 8th Amendment prohibition on cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97 (1976)

1. Does official have knowledge of facts that prisoner had a sufficiently serious medical need?
2. Does the official actually believe that the prisoner has a serious medical need?
3. Did the official disregard the prisoner's need for medical treatment?

Mental health needs are no less serious than physical needs. *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004)

There is no question that an inmate with a major mental illness, such as schizophrenia, bipolar disorder, or major depression has a right to medication (if he wants it), since the Federal Constitution mandates that correctional officials provide appropriate treatment to any inmate with a "serious" medical need, and medication is an integral part of treatment for these conditions. *Smith v. Jenkins*, 919 F.2d 90 (8th Cir. 1990); *Waldrop v. Evans*, 871 F.2d 1030 (11th Cir. 1989)

The Americans With Disabilities Act

Mental illness can be a mental impairment that substantially limits a major life activity.

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program, or activities of a public entity, or be subjected to discrimination by any such agency.

“It is not uncommon to find individuals with serious mental illness in segregation in facilities with inadequate mental health services because their untreated mental illness often results in significant behavioral problems.

...

The difficulties of providing appropriate and adequate access to mental health care and treatment are especially problematic in a segregation environment. Logistical barriers frequently include inadequate office space and limited access to inmates because of security issues.”

Mental Health Considerations for Segregated Inmates
Appendix D to 2008 NCCHC Standards

The absence of regular and private mental health evaluations and exposure to psychotic inmates constitute cruel and unusual punishment. Poor hygiene, isolation, sleep deprivation, high temperatures, and dim lighting were also considered to be contributing factors to the risk of mental health deterioration.

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004)

Ind. Prot. & Advocacy Servs. Comm'n v. Comm'r, Ind. Dep't of Corr., 2012 U.S. Dist. LEXIS 182974, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2012)

Plaintiff Class consists of all current and future mentally ill prisoners who are committed to the Indiana Department of Correction and who are housed in a setting...that features extended periods of time in cells, including...disciplinary segregation, administrative segregation, or in the New Castle Psychiatric Unit.

The Court found that there are three ways in which segregation is harmful to prisoners with serious mental illness:

1. lack of social interaction such that the isolation itself creates problems
2. isolation involves significant sensory deprivation
3. enforced idleness, permitting no activities or distraction

“Severe conditions in the segregation units cause a predictable deterioration of the mental health of seriously mentally ill prisoners and the IDOC has explicitly observed, diagnosed and noted patient decompensation.” (emphasis added)

The Court found that the class is united by the common question of whether the lack of treatment and isolated living conditions in IDOC facilities violate the 8th Amendment and denied the defense motion to decertify the class

“The Plaintiffs’ thesis that the effect of segregation on mentally ill prisoners in Indiana is toxic to their welfare is supported by a preponderance of the evidence. Without appropriate treatment and appropriate relief, the toxic effects of segregation will continue to cause serious injury to mentally ill prisoners.”

Honorable Tanya Walton Pratt, US D Judge

Bearden v. McKeithen, 2012 WL 3938255 (N.D. Fla.)

Summary judgment against inmate known to be suicidal.

Graham v. Jubb, 2012 WL 2577539 (E.D. Cal.)

Inmate removed from mental health program because custody staff thought he was malingering states claim for interference with treatment

Elements of a Mental Health Program

- Screening and evaluation to detect serious mental illness
- Adequate staff in terms of training and numbers
- Adequate physical facilities (bed space)
- Adequate records to assure continuity of care
- Proper administration and follow-up psychotropic medications
- Suicide prevention program
- Humane and clinically sound approach to mechanical restraints
- Staff training
- Absence of brutality toward inmates with mental illness
- Quality assurance program and management info system
- Reasonable post-admission access to adequate care

DNA Swab Collection

Maryland v. King, 12-207 US Supreme Court (June 3, 2013). When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee’s DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.

Timely Probable Cause Determinations

Arrestees have a Fourth Amendment right to a prompt probable cause determination. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (an arrestee is entitled to a probable cause determination within forty-eight hours absent “a bona fide emergency or other extraordinary circumstance”); *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest).

Wilson v. Montano, 715 F.3d 847 (10th Cir. 2013) under New Mexico law, arresting officer, sheriff and jail administrator have duty to ensure that detainees receive a prompt probable cause determination. Joins 6th, 7th and 9th circuits.

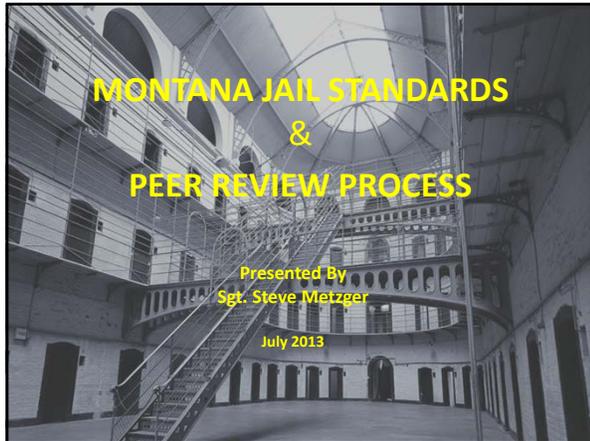
Employment Law Developments

Employee plaintiff must establish “but-for” causation in Title VII retaliation case. *University of Texas Southwestern Medical Ctr. v. Nassar*, No. 12-484 U.S. Supreme Court (June 24, 2013). “Motivating factor” not enough.

For purposes of imposing vicarious liability under Title VII, a “supervisor” must have authority to make “a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. *Vance v. Ball State University*, No. 11-556 (June 24, 2013).

APPENDIX XVII

Montana Update



Review (Inspection) Process

- 1998 "Mock" Inspections done at three (3) Jails
- 2008 "Peer Reviewer" Training conducted at MLEA (16 participants)
- "Trial" Peer Review of three (3) Jails
- 2009 thru 2011 Nine (9) Jails in Montana had Peer Reviews done
- 2013 Peer Review of Roosevelt County Jail conducted – Following ACLU letter

**MONTANA
JAIL
STANDARDS**

**35 YEARS –
TODAY –
TOMORROW**

Legislative History

- 1983 and 1985 Legislation introduced to create *Montana Jail Standards Commission*
- Failed in both sessions
- 1989 Legislation introduced to establish *Montana Jail Standards Commission*
- Failed due to no funding mechanism to establish and operate
- 1999 *Detention Center Inspection Program* Legislation
- Failed, no funding from Legislature

History

- (1977 - First published Standards by ACA for Local Facilities)
- 1978 First Standards process begun in Montana by Sheriff Pete Howard, Teton County
- 1980/81 \$35,000 Grant through NIC awarded
- 1981 First Standards completed
- 1986 *Jail Recodification Task Force* created by MBCC
- 1993 Standards Revision
- 1998 Standards updated (NIC Grant)
- 2000 Standards *Third Edition*
- 2006 Montana Detention/Jail Standards Reviewed/Updated/Revised (NIC Grant)
- 2012 Montana Jail Standards were Reviewed/Updated/Revised

The Jail Standards committee, who consists of Sheriff's, Jail Commanders and Detention Staff from various size Jails/Detention Facilities around the state updated the Jail Standards in accordance with the ACA Jail Core Standards. The Standards were sent to MSPOA and MACO and the Sheriffs in September 2012 for review and approval. It must be noted at the time of the updating of the Standards the representative from MACO had resigned and MACO did not participate with the updating of the Standards, or offer any assistance.

Our biggest obstacle at this point seems to be getting all the Sheriff's to participate with having a review done on their facilities and how we fund the program. Everyone that we have talked with seem to agree this is something that needs to be done, but is saying they do not have the staff or budget to let staff go and assist with peer reviews and pay them a wage while they are out doing a peer review.

Early in 2007 the Montana Jail standards were distributed to all the Montana Sheriff's with the assistance of MSPOA and MACO for final review.

In mid 2008, Cascade County, Custer County & Park County participated in a trial peer review of the Montana Jail Standards.

- What sort of documentation should be generated from the inspection?
- Comprehensive report listing both compliance and non-compliance
 - Non-compliance items should be accompanied by a narrative explaining nature and extent of non-compliance
 - Report should include a separate summary listing items of non-compliance that need to be addressed
- Who should receive copies of the inspection report?
- Sheriff and jail administrator initially
 - Sheriff should forward to commissioners and insuring entity
 - Inspection program coordinator
 - Coordinator should share with advisory committee (entity with authority to certify compliance and/or order corrective action)

Montana Jail Mission Statement

“The mission of the Jail Standards Advisory Committee is to review, revise, and maintain standards for all local Detention Facilities. The Committee will establish a program to provide education, evaluation, and support to assist facilities in achieving adherence with the standards.”

- The participants outlined the desired characteristics of the inspection, follow-up, and compliance monitoring aspects of their standards and inspection program.
- A. Who inspects?
- Trained "peer" inspectors (jail administrators, sheriffs, etc.)
 - Team approach (assures more complete, objective perspective)
 - Qualified inspectors (by knowledge, skills, and credentials)
 - "Peer" inspectors volunteer their time and are given permission from their supervisors to assist with the inspection program
 - There is a coordinator to help coordinate and facilitate the inspection process statewide (probably paid)
 - The coordinator is also the custodian of the inspection reports and related documentation
- How often should jails be inspected?
- Annually
 - Upon special request
 - When there has been a significant event in a jail or change of sheriff or administrator

STANDARDS

Key Feature of Standards:

The term **"mandatory standard"** may also take on significance *within* a set of standards as well. Some sets of standards, including the ACA and the BIA standards, have **a core set of individual standards** that are regarded as **mandatory**. These are standards *where compliance is viewed as critical*. To achieve accreditation with such standards, the facility has to demonstrate compliance with all of the mandatory standards as well as a certain percentage of the remaining standards.

Administering Agency – Organizational Options:

In discussing where the standards and inspection should reside, the participants were reluctant to consider options involving state government entities. The option preferred by the participants was to have the program administered jointly by the MSPOA and MACO.

- C. Should inspections be announced?
- Yes
- D. What sort of documentation should be generated from the inspection?
- Comprehensive report listing both compliance and non-compliance
 - Non-compliance items should be accompanied by a narrative explaining nature and extent of non-compliance
 - Report should include a separate summary listing items of non-compliance that need to be addressed
- E. Who should receive copies of the inspection report?
- Sheriff and jail administrator initially
 - Sheriff should forward to commissioners and insuring entity
 - Inspection program coordinator
 - Coordinator should share with advisory committee (entity with authority to certify compliance and/or order corrective action)

- F. How will non-compliance issues be addressed?**
- A mutually agreed-upon corrective action plan will be developed
 - Inspection program will offer assistance and guidance, if such is requested
- G. How will full compliance be recognized?**
- Ideally, co-certification by MSPOA and MACO
 - Full compliance will require 100% compliance with core (formerly called mandatory) standards, along with compliance with a certain percentage on non-core standards
- H. What support role should the standards and inspection program have in addition to conducting inspections?**
- Provide examples of policy and procedures, forms, manuals, etc
 - Stay current on case law and keep standards updated
 - Provide referrals; help with networking among the jails
 - Plans review and approval
 - Training and technical assistance
 - Census monitoring
 - Solicit/administer grants
 - Track and highlight trends
 - Regional jail planning/coordination
 - Advocate for jails

	FACILITY													PEER REVIEW STATS												
	Administration, Organization & Management	Personnel	Training	Facility Information Systems	Fire Safety & Emergency Procedures	Security & Control	Special Management Inmate	Food Service	Sanitation & Hygiene	Health Care Services	Inmate Rights	Inmate Work & Discipline	Communication, Mail & Mailing	Admission & Release	Classification	Inmate Services & Programs	Work Programs	Physical Plant	TOTAL							
05-18 to 05-20-1010																										
Compliant	4	4	8	2	3				2	2		3	9	5	1				48%							
Partial Compliant	2	1	1	3	4	2	4	1	7	1	2	2	1	1					33%							
Total																			77%							
Non-Compliant	1	1	4	3	1	5			5	1	1	1							23%							
10-08 to 10-07-2010																										
Compliant	5	2	7	5	2			1	2	4		1	7	3	1				64%							
Partial Compliant	1	2	1	2	1	3			5	1	1	1	2	1					23%							
Total																			63%							
Non-Compliant	1	1	1	3	5	2			1	6	1	4	3	2					33%							

- FACILITY WHO HAVE HAD A PEER REVIEW**
- Glacier County
 - Hill County
 - Lincoln County
 - Musselshell County
 - Powder River County
 - Rosebud County
 - Sweet Grass County
 - Valley County
 - Yellowstone County
 - Butte-Silver Bow
 - Lewis & Clark
 - Roosevelt County

Current Status

- 2012 Revisions need to be formally accepted and distributed
- Peer Reviewers status unclear
- Peer Review process and protocol undetermined
- Focused/centralized function unclear

	FACILITY													PEER REVIEW STATS												
	Administration, Organization & Management	Personnel	Training	Facility Information Systems	Fire Safety & Emergency Procedures	Security & Control	Special Management Inmate	Food Service	Sanitation & Hygiene	Health Care Services	Inmate Rights	Inmate Work & Discipline	Communication, Mail & Mailing	Admission & Release	Classification	Inmate Services & Programs	Work Programs	Physical Plant	TOTAL							
01-26 to 01-27-2011																										
Compliant	1	5	5	10	6	10	3	9	3	14	1	3	10	7	2	1	1		87%							
Partial Compliant	1	1	1	2						4	1	2							12%							
Total																			98%							
Non-Compliant						1					1								2%							
02-22 to 02-24-2011																										
Compliant	1	5	5	10	9	9	3	8	3	15	2	6	10	7	2	1	1		98%							
Partial Compliant	1						1		2										9%							
Total																			100%							
Non-Compliant																			0%							

Future/Sustainability Options

- Try to re-establish "Peer Review" process, recruit/train/organize "Reviewers". Determine leadership/ownership of maintaining Standards and process
- Contract for Director/Administrator of Standards/Review process; to maintain Standards and Review documents and archives and promote/schedule maintain Jail Standards and Reviews. Determine the feasibility of trying to maintain a "peer/volunteer" process versus a "stipend" system.
- Contract with out-of-state company to take over Standards and Review Process. Budget and control to be considered.

June 2013

Proposal

- a.) Determine/Employ/Contract for a Director/Administrator of Jail Standards
- b.) Establish an *overseeing* Board/Commission of "Stake Holders"

c.) Director/Administrator will present "proposals" on the *structure and function* of the Jail Standards and Review process:

-Define "purpose", managing and evolution of Standards

-Proposed "functionality" of Review Process; the "Why's" and "How" of it

-Determine potential "networking":

- Sheriff's
- MACo} Risk Mgmt., Policy & Procedure
- MBC} Compliance Reports
- DOC/DPHHS } PREA, Suicide Prevention Initiative
- MLEA} Training Issues
- NIC } Resource, Web Based training

d.) Proposed Budget estimates for implementation and sustainability
-In conjunction with Board/Commission's direction on "how much" of "what" *can or should* be done

e.) Determine "funding" sources
-from stakeholders and collaborative Agencies and Associations

APPENDIX XIII

Dismantling a Jail Inspection Program

Dismantle a County Jail Inspection Program

Tom Vogel, RS, MPA
Manager: Environmental Health, Fire Safety, and
County Jail Services Unit

Michigan: Jail History: 1975 Promulgate Rules & Standards

- TRUST, but VALIDATE!
- Newly organized Office of Jail Services updated its *Administrative Rules & Standards*.
 - 79 Rules; 36 pages of detailed specifications:
 - Planning
 - Construction
 - Operations

Michigan: Jail History, circa 1953

The Department of Corrections shall **supervise** and **inspect** jails and lockups that are under the jurisdiction of the county sheriff to obtain facts concerning the proper management of the jails and lockups and their usefulness. The department shall **promulgate rules and standards** promoting the proper, efficient, and humane administration of jails and lockups under the jurisdiction of the county sheriff...

(¶ 3 of MCL 791.262)

Michigan: Jail History: 1998 Adjustments to Existing Rules & Standards

- Office of Jail Services was resized and repurposed; including its Adm. Rules:
 - 38 Rules (from 79 rules) ;
 - 10 pages of general instructions; written in ACA Standard's language.
 - Now, jail is required to have 23 different "...written Policies, Procedures, and practice..."
 - Now, jail is required to obtain an Annual Fire Safety and Food Safety Inspection.
 - Now, jail is required to obtain an Annual Review & Approval of its Fire Evacuation Plans and Menu.

Michigan Jail History: 1973 Supervise & Inspect

- Within the MDOC, Office of Jail Services.
- 83 Counties: 81 Jails & 2 County Lock-ups.
- Obtained Federal Grant to develop office.
 - 1 Manager
 - 3 Operations Inspectors
 - 2 Food Service Inspectors
 - 2 Trainers
 - 1 Part-Time Nutritionist
 - 1 Construction Specialist
 - 1 Analyst
 - 2 Reimbursement staff

Michigan: Jail History: 2000 Staffing & Types of Services Provided

- Organization:
 - 1 Manager w/ 2 Inspectors
- Inspections:
 - Comprehensive Inspections, 12 – 18 months
- Complaints:
 - Limited site visits. Confined to telephone contacts.
- Consultations
 - Varied, usually limited cell space questions.
- Construction Plan Review
 - Comprehensive plan review & site inspections.
 - Issue final Letter of Approval.

What happened to MI Office of Jail Services: 1975 to 2010?

- 1978, Passage of the Headlee Amendment.
- Early 1980's, severe prison riots in 3 sites; Consent Decree entered w/ US-DOJ.
- Governor abolishes Corrections Commission.
- Administration's focus/interest in jails waning (but, MSA needed MDOC as a backstop).
- MI voters approve comprehensive prison sentencing reforms; large prison growth period – new prisons & employees to meet increased number of prisoners.

Michigan Jails: 2012 Changes **NOW** being considered.

- Baseline status = 2011 and 2012 Annual Inspections.
- Previous "compliance status" findings recorded by CJSU auditors:
 - 2005 @ 71% in Full Compliance
 - 2006 @ 44%
 - 2007 @ 73%
 - 2008 @ 83%
 - 2009 @ 58%
 - 2010 @ 69%
 - 2011 @ 66%
 - 2012 @ 67%

Michigan Jails: 2010 Operational Changes

- County Jail Services Unit (CJSU) reorganized following retirement of its Administrator.
- CJSU (2 auditors) re-located to the Physical Plant Division, Bureau of Fiscal Management, MDOC.
 - This Division responsible for all prison physical plants.
 - Joined w/ Environmental Sanitarians and Fire Safety Inspectors.
- CJSU retained its annual inspection schedule, complaint investigation, and plan review/inspection services duties.

Michigan Jails: 2013 CJSU is at a fork in the road.

- Option A:
 - Sheriff submits a Self-Audit Report to MDOC
- Option B:
 - MSA develops an "inspection team" to inspect each other's jail.

Michigan Jails: 2012 Changes **NOW** being considered.

- MDOC, OLA has provided an opinion regarding jail inspections:
 - Need 1 physical walk-through inspection,
 - Set the Baseline Status,
 - Thereafter, MDOC can accept statement from Sheriff attesting to their compliance status.
 - Lastly, MDOC can select a time frame to accept such statements.

Michigan Jails: 2013 CJSU is at a fork in the road.

- OPTION A:
 - Complete a "Survey Monkey" document provided by MDOC.
 - **R 791.706 Use of Force**
Has your facility established and maintained written policy, procedure and practice which restrict the use of physical force to instances of justifiable self defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority? Is it clear that physical force shall not be used as punishment? Is a written report prepared after force is used and is it submitted to administrative staff for review? [] YES [] NO.
- If NO, please explain:

Option A, Continued.

- R 791.710 Fire Inspections
 - Has your facility established and maintained written policy, procedure, and practice that provide for a comprehensive MONTHLY inspection of the facility by a trained person designated by the facility administrator?
 - And, is the policy and procedure reviewed ANNUALLY and updated as needed?
 YES NO
- R 791.737 Safety & Maintenance
 - Has the administrator developed and implemented safety standards that will protect the health and welfare of inmates and staff?
 - And, has the administrator ensured that inmate and staff equipment and structures are maintained?
 YES NO

Michigan Jails: Working Relationship w/MDOC

- See maps of MI jails; MI prisons.
- MDOC has a +\$2B annual budget.
 - Significant reductions in past years...
 - Closed some prisons, all camps and correction centers
 - Prison population reduced from 51K to 43.5K in 10 yrs
 - 13,517 FTEs; 6,749 COs
 - Oversee: 18,218 Parolees + 49,176 Probationers
 - Eliminated all ADWs, many RUMs, and RUOs
 - Contract many Health Care Services
 - Agreements w/ 11 jails to provide Virtual Prisons
 - Food Service operations scheduled for privatize in '13
 - Prisoner store operations being considered for same
 - Only \$ provided to jails: parole detainees and/or virtual prison

Option A, Continued.

- The jail facility would still need to obtain inspections or reviews by outside, qualified persons:
 - Food Safety
 - Fire Safety: Building and Evacuation Plan
 - Menu: Dietary review.

Dismantle a County Jail Inspection Program



Waiting for the jury to deliver the verdict.

Option B.

- Volunteers from MI Sheriff's Association (MSA) would conduct site reviews; report findings to MDOC.
- Details have yet to be discussed w/ CJSU as of this date.